CONVENTION BETWEEN THE UNITED STATES AND UNITED MEXICAN STATES

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

TREATY DOC. 97-18—CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES FOR THE RECOVERY AND RETURN OF STOLEN OR EMBEZZLED VEHICLES AND AIRCRAFT WHICH WAS SIGNED AT WASHINGTON ON JANUARY 15, 1981

JUNE 11, 1982

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CONTENTS

	Page
Hearing day:	
June 11, 1982	1
Statement of—	
Gilliland, Paul W., president, National Automobile Theft Bureau, Palos Hills, Ill., accompanied by Charley Evans, manager, Southwestern Division, National Automobile Theft Bureau, Dallas, Tex	13
Killingsworth, Benjamin B., commander, Border Patrol Division, California Highway Patrol, San Diego, Calif	18
Lane, Larry, Acting Consul General, U.S. Embassy, Mexico City, Mexico	5
Mendelsohn, Allan I., Ward & Mendelsohn, P.C., Washington, D.C., on behalf of United States Aircraft Insurance Group, Southeastern Aviation Underwriters, and National Aviation Underwriters	21
Olsen, Roger M., Deputy Assistant Attorney General, Criminal Division, Department of Justice	3
Insertions for the record:	
Prepared statement of Roger M. Olsen	3
Prepared statement of Paul W. Gilliland	14
Prepared statement of Benjamin B. Killingsworth	19
Prepared statement of Allan I. Mendelsohn	23

CONVENTION BETWEEN THE UNITED STATES AND THE UNITED MEXICAN STATES

FRIDAY, JUNE 11, 1982

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 4221, Dirksen Senate Office Building, Hon. Charles H. Percy (chairman of the committee) presiding.

Present: Senators Percy and Hayakawa.

The CHAIRMAN. This is a subject in which I have had a deep personal interest for many reasons, as I will subsequently explain.

We have just come back from Santa Barbara, where the Twenty-Second Annual Mexican-United States Parliamentary Conference was held. It was held in Santa Barbara so that the participants could meet with the President, as he had agreed to do some time ago. We had a fine meeting and discussed many problems, including what we will be discussing today.

The Committee on Foreign Relations meets to hear testimony this morning on the proposed convention between the United States and Mexico for the Recovery and Return of Stolen and Embezzled Vehicles and Aircraft. The new convention would supersede an already existing 1936 agreement between the United States and Mexico on the same subject.

While to the uninformed, the proposed convention might appear to be a technical agreement with a narrow application, the law enforcement problem it addresses is one of national and international significance. Vehicle theft is a crime of enormous scale in the United States. Yet, I imagine if a Gallup poll were taken on vehicle theft, that not 1 out of 100 or even 1 out of 1,000 citizens has any idea of the scope and concept of vehicle theft in this country. Its cost and the number of vehicles and theft victims involved is just immense.

Last year, more than 1 million vehicles, valued at more than $3 billion, were stolen in the United States of America. Of that number, it is estimated that 20,000 stolen U.S. vehicles, valued at more than $100 million, were illicitly exported from the United States to Mexico. And, according to law enforcement experts, the problems continue to grow.

Vehicle theft is almost a risk-free crime that will become even more pervasive unless we really do something about it.

As I learned in 1979, when I chaired 5 days of hearings on professional vehicle theft, cars and trucks are easy marks for both amateur and professional thieves. At those hearings, we had set up in the com-

mittee room several vehicles and had as witnesses several thieves who were brought from Federal prison to participate in the hearings. One of them apologized for the fact that it took him all of a minute and a half to spring the lock, open the door, short the ignition and start the car. He apologizied profusely. He was in a mask and we could not see his red face because we were trying not to disclose his identity because of his testimony. But he apologized because he had been in prison for 9 months and must have been out of practice. He said that it never took him this long to break into a car when he was in practice. He said he was stealing at the rate of three, four, or five cars a day, on order. Whenever anyone would need a particular car, model or color, he knew just from his card catalog where he could go to steal one. He would take them just like that.

Many of the witnesses who testified at those hearings urged the Federal Government to do more to combat this growing criminal enterprise.

The professional thieves who testified said that it was only stupidity on their part that caused them to be caught. They said they could have gone on stealing for a whole lifetime without ever being caught, or so they anticipated.

To this end, I introduced S. 1676, the Motor Vehicle Theft Law Enforcement Act of 1981. This bill would authorize, if found to be cost-effective, the placement of vehicle identification numbers [VINS], on various vehicle parts providing law enforcement with an audit trail to trace and identify stolen vehicles. It would also impose stiff penalties for importing or attempting to export a stolen vehicle or a vehicle with an altered VIN, a sure sign that the vehicle is a stolen vehicle.

Criminals testified before us that if VINS were put on replacement parts, it would put a tremendous crimp into the whole stolen vehicle profession.

Support for the bill is progressing. Just yesterday, the Consumer Protection Subcommittee of the House Energy and Commerce Committee approved the bill and recommended that the full committee schedule it for markup in the near future.

The proposed convention before us today should be a complement to the legislation since it provides for more efficient and effective procedures to secure the recovery and return of vehicles and aircraft stolen or embezzled in the United States and subsequently discovered in Mexico.

I therefore will be most interested in hearing from the representatives of the Departments of State and Justice on the innovations contained in the new convention. I will also follow closely the testimony of our public witnesses who together know a great deal about the proposed convention and the problems of vehicle and aircraft theft along the United States-Mexico border.

As I indicated, just a few weeks ago, I had the pleasure of attending the Twenty-Second Meeting of the Mexico-United States Interparliamentary Conference, during which Mexican and American legislators shared their views on a wide range of issues affecting both nations.

As with the conference, I am hopeful that the proposed convention will be a further opportunity to foster cooperation and understanding on an issue of mutual concern, one which affects the daily lives of many thousands of Americans.

The committee will hear first from Roger Olsen, Deputy Assistant Attorney General of the Criminal Division of the Department of Justice, and Larry Lane, Consul General, U.S. Embassy, Mexico City, Mexico.

Gentlemen, we welcome you very much.

Mr. Lane, would you be good enough to tell Ambassador Gavin how much we appreciated his and Mrs. Gavin's presence throughout the conference in Santa Barbara. They added tremendously to it. In the 22 years that we have had these conferences, this is the first one that has been opened by a chief of state, in this case the President of the United States, and the first time that both ambassadors, the Ambassador from Mexico and the Ambassador from the United States, were present throughout the conference. This added tremendously to the conference's success.

Mr. Olsen, why don't you proceed.

STATEMENT OF ROGER M. OLSEN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. OLSEN. Thank you, Mr. Chairman. It is a privilege to be here to address you on an issue that is of grave importance to law enforcement in general, and particularly to State, local, and Federal law enforcement efforts to curb the area of automobile theft and aircraft theft.

I would briefly summarize my statement and would point out that what we have attempted to achieve with the convention are, first, a tighter mechanism for notification of when the automobiles, once they are located in Mexico, are brought to the attention of the U.S. Government; second, a more streamlined procedure for the retrieval of the automobiles themselves; restrictions put on the use of the vehicles; and, finally, a more intelligent procedure for the claims by United States car owners to be able to retrieve their stolen vehicles and aircraft.

The convention itself is the result of a great deal of work by both the State Department and Justice Department as well as many other State, local, and Federal agencies and institutions in the private sector.

With me this morning to assist me and this committee from the Department of Justice are Mr. Mike Abbell, the Director of the Office of International Affairs, who represented the Department of Justice during the important discussions and negotiations with the Mexican officials, and Mr. Steve Weglian from the Criminal Division, who assisted him in that respect.

My statement is brief. My written statement is only four pages. I would entertain any questions that you may have.

The CHAIRMAN. The full text of your comments will be incorporated in the record.

Mr. OLSEN. Thank you.

[Mr. Olsen's prepared statement follows:]

PREPARED STATEMENT OF ROGER M. OLSEN

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to express the strong support of the Department of

Justice for the ratification of the new Convention with Mexico for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft which was signed on January 15, 1981.

It is estimated that each year between 10,000 and 20,000 motor vehicles, having an estimated value between $100 million and $200 million, are stolen in the United States and taken into Mexico. The aircraft insurance industry estimates that as many as 50 private airplanes, having an approximate value of as much as $6 million, also are stolen or embezzled in the United States and taken into Mexico each year.

While the United States obviously is very concerned with the loss of such a large number of motor vehicles and aircraft, Mexico is equally concerned with the illegal smuggling into Mexico each year of what it estimates to be $1 billion worth of contraband appliances, electronic equipment and firearms. According to Mexican authorities, most of this smuggling is carried on through the use of private aircraft flying from the United States to clandestine airstrips in northern Mexico. Mexico regards the smuggling of such a large quantity of appliances and electronics equipment to be particularly detrimental to its fledging appliance and electronics industries.

The 1936 Convention has failed to serve the interests of the United States in facilitating the recovery and return of motor vehicles and aircraft stolen in the United States and taken into Mexico for a number of reasons. First, it places no obligation on the Mexican authority which seizes such stolen vehicles or aircraft to notify any central Mexican authority, and no obligation on Mexico to notify the United States.

Second, it places no restrictions on the use of such seized vehicles and aircraft from the time they are seized until they are returned to their owners in the United States.

Third, it requires that all claims by United States owners must be made through the United States Embassy in Mexico City to the Mexican Ministry of Foreign Relations regardless of the location of the motor vehicles. Obviously, this requirement is unduly cumbersome and inefficient with respect to the large number of vehicles seized by Federal, State and local authorities in northern Mexico.

Finally, it fails to specify with particularity the documentation required by Mexico for the return of vehicles or aircraft and the procedures to be followed in securing their return.

The Mexican Government believes that the present Convention also has failed to serve its interest of deterring the smuggling of contraband from the United States into Mexico because it does not establish procedures through which Mexico has the right to call upon the assistance of United States law enforcement authorities in ascertaining whether the owner of an allegedly stolen or embezzled airplane, which was seized while smuggling contraband into Mexico, was acting in collusion with the smuggler. Therefore, Mexican authorities believe that the present Convention may result in their returning aircraft to American owners who were in fact acting in collusion with the smugglers, thereby undermining Mexico's efforts to curb such smuggling.

Because the 1936 Convention was plainly failing to serve the interests of both countries, Mexico and the United States, at a meeting of high-level law enforcement officials in May 1979, agreed to attempt to draft a new Convention designed to cure the deficiencies of the existing one. We believe the new Convention achieves this purpose.

The Committee also should note that the new Convention is closely patterned on informal procedures developed during the past five years by State and local law enforcement authorities in California and the Mexican state of Baja California Norte in conjunction with the United States consulate in Tijuana. Many times more motor vehicles have been recovered under the Baja program than during the whole 45 years of the operation of the present Convention. Thus, we have every reason to believe that the new Convention will work not only in theory, but also in practice.

For the above reasons, we urge that the Senate give its advice and consent to the ratification of the new Convention at an early date.

The CHAIRMAN. Mr. Lane, we are happy to hear from you.

STATEMENT OF LARRY LANE, ACTING CONSUL GENERAL, U.S. EMBASSY, MEXICO CITY, MEXICO

Mr. LANE. Thank you.

Before I get started, I would like to say that I am accompanied today by Fay Armstrong of our legal staff, who also helped negotiate this convention.

I will read my statement, if I may.

As Acting Consul General in Mexico City, I have responsibility for, among other things, Citizens Consular Services, which include the furnishing of assistance to Americans seeking the recovery of vehicles and aircraft stolen or embezzled in the United States and taken into Mexico. I am pleased to have the opportunity to appear before you today to urge favorable consideration of the proposed new convention between Mexico and the United States for the recovery and return of stolen or embezzled vehicles and aircraft. The Department of State, and the Bureau of Consular Affairs in particular, is confident that the proposed new treaty will greatly facilitate the recovery of vehicles and aircraft from Mexico.

Mr. Olsen in his statement has described the general considerations which led to the renegotiation of the 1936 convention and pointed out the most important features of its proposed replacement. I would like to associate myself with his statement and elaborate briefly on some of the recurring problems which my office has experienced under the 1936 convention. Recent efforts with Mexican officials, who are already looking toward the entry into force of the new convention, confirm the utility of its solutions to these problems. Those of us in Mexico who work in this area are anxious to have the 1981 convention as our operational framework.

Documentation of ownership has proved to be a continuing and vexing problem under the 1936 convention. The convention states merely that "documentation legally valid in the United States of America" must accompany requests for return, and the Mexican foreign ministry is responsible for determining the legal sufficiency of each such request. The foreign ministry, however, has required that the documentation be in a form which meets the requirements of Mexican law. Until recently, the documentation which the foreign ministry has required has been difficult and often costly for individual claimants to obtain. For example, Mexican consular officers have had to authenticate each individual document submitted, and there has been no limit on the translations which could be requested. Technical deficiencies often could not be recognized by the U.S. Embassy. Thus, in submitting requests, the Embassy could never be certain that the documentation would be accepted. In some cases, requests have been required to be resubmitted over and over again, each attempt awaiting further documentation from the claimant. The process has been time-consuming and frustrating. Without a clear standard in the treaty, there has been no way to limit the demand for further documentation to meet the requirements of Mexican law.

The proposed 1981 convention would eliminate uncertainty about documentation and substantially simplify present requirements. It

95-918 O - 82 - 2

lists the specific documents, including translations, which need accompany requests for return. The basic documents are commonly-accepted evidence of ownership—such as vehicle titles and certificates of registration—and a certified copy of the theft report. In some cases, a document of transfer and/or power of attorney is also required. An investigative report is provided for in the case of aircraft, and it will be supplied by a U.S. Government agency. Only the reports need to be translated. These are documents which should be readily available to any individual seeking the return of a vehicle or aircraft from Mexico.

Another recurring problem under the 1936 convention has been the failure of custodial authorities to cooperate with the foreign ministry in its implementation. The 1936 convention provides that all requests be submitted to the foreign ministry—giving it primary responsibility for locating and arranging for the return of vehicles and aircraft. The Mexican foreign ministry, however, never acquires custody of such property, and thus serves essentially as a middleman with the custodial authorities. These authorities are frequently reluctant to relinquish custody and require repeated followup calls to process a return. With its backlog of cases, the foreign ministry has been unable to pursue individual requests with the attention the Embassy considers desirable and necessary to obtain results. At the same time, when the Embassy has sought to intervene directly with custodial authorities, some have refused to deal with us on the grounds that the 1936 convention requires that all communications with the U.S. Government be handled by the foreign ministry.

The proposed convention would cut through these bureaucratic problems by establishing that the custodial authorities will not only receive and process requests for return, but will notify the U.S. Government of their seizures of U.S. registered vehicles or aircraft. This direct accountability, in addition to the provisions for mandatory storage and nonuse of vehicles or aircraft subject to return, is expected to eliminate a major cause for delay in the return of vehicles and aircraft from Mexico.

I have described these two problem areas to illustrate how the recovery process will be facilitated by replacing the 1936 convention with the one signed last year. Time does not permit an explanation of all of the practical ramifications of the new convention.

The most important result of the new convention, however, is perhaps psychological. It represents a fresh commitment by Mexico and the United States to begin working in a coordinated fashion to combat a shared law enforcement problem of very large dimensions. The flow into Mexico of vehicles stolen and contraband acquired in the United States seems to be a steady stream. There are fewer aircraft, but their dollar value is high and they are believed to be the principal carriers of such contraband. The 1981 convention attempts to establish a framework within which the United States and Mexican law enforcement authorities can work together effectively on both fronts. It is a difficult task. The track record under the 1936 convention may not be very encouraging, but there is a new commitment to tackle the problem.

In this vein, my predecessor and I have been engaged in periodic discussions with Mexican officials since June 1981, in an effort to develop the channels of communication which will be required under the new

convention. One of the results of those discussions—and one which confirms our expectations for the new treaty—was the provisional adoption by Mexico of documentary requirements stated in the new text. Thus, at the present time, Mexico is accepting as sufficient proof of ownership under the 1936 convention the documents specified in the proposed convention. This change naturally was welcomed by the Embassy and has greatly simplified the preparation of requests for return. In addition, both the Mexican Federal Vehicle Registry and the Attorney General have voluntarily instituted tentative systems of notification of seizure and now accept requests for return directly from the Embassy.

As a result, recoveries are proceeding more rapidly and at a somewhat greater rate than before these Mexican initiatives were implemented in October 1981. For example, since that time, 25 vehicles and 7 aircraft have been recovered under the treaty, compared to only 16 vehicles and 3 aircraft in the preceding 8 months. As procedures are refined through experience and further discussion, the number of recoveries should continue to increase.

For vehicles, in particular, the potential increase could be dramatic. The Federal Vehicle Registry has now begun submitting to the Embassy lists of foreign-made vehicles which have been seized and are scheduled for auction. A list of about 200 vehicles submitted in April contained at least 12 that had been reported stolen in the United States. The owners of these vehicles and others recently reported to us by the Mexican Attorney General and the Vehicle Registry have been notified, and the Embassy currently is waiting for the documentation to submit requests for return. When the more comprehensive system of notification contemplated by the new convention is worked out, we expect the number of such cases to grow substantially.

For these reasons, I urge this committee to recommend to the full Senate that it give its advice and consent to the ratification of the new convention. The Mexican Senate gave its approval in December of last year, and entry into force is now awaiting action by the United States. The new convention will advance Federal and State law enforcement objectives and help innocent property owners recover vehicles and aircraft taken across the border. It represents a very positive step forward in this difficult area, and I urge you to give it favorable consideration.

Thank you.

The CHAIRMAN. Thank you very much. I think you both have outlined the nature of the problem and its cost to both countries.

There is one aspect of this that is very interesting. Vehicle theft, as we used to look on it and as I described it in the hearings that were held in the Governmental Affairs Committee, used to be mainly a sort of teenaged prank. You usually would get your car back. Now, with upwards of $200 million worth of vehicles being stolen and taken to Mexico, there is not much recovery. Recovery is in very small numbers.

In this country, stolen vehicles are subjected to the so-called "chop shop," which means sometimes only a matter of hours after the vehicle is stolen, it has been broken up into parts. The high-cost parts have been sold and the rest has been disposed of.

That is the great nature of the problem.

After hearing that a million vehicles are stolen a year, many people might feel that they are lucky because theirs have not been stolen. Well, no one should feel lucky about that.

Sure, it is unfortunate to have a stolen car. But every car owner is paying in total more than a billion dollars just for insurance. Every car owner in America who owns insurance is paying for the cost of this crime.

We have to plug up the two loopholes—the "chop shop" and the transport of these vehicles across the border into Mexico.

As has been noted several times this morning, up to 20,000 have gone into Mexico. Where do these come from, essentially? What is the market like for stolen U.S. vehicles in Mexico?

Mr. LANE. If I may say so, Mr. Chairman, this is only a generality because we don't have the statistics. But most of these cars are in Mexico illegally, also, because the Mexicans have very strict import laws. It is difficult to import a car legally into Mexico. Once the cars are there, they are in contravention of their own system as well as having been already stolen.

They come basically from the border States in great numbers, California and Texas particularly.

The CHAIRMAN. It has been widely reported that bringing stolen vehicles into Mexico for resale is almost a risk-free crime. Would you comment on that, Mr. Olsen?

Mr. OLSEN. One of the problems that we have is that our experience in factual or statistical evidence is not that great.

You will notice in my written statement that the figure is between 10,000 and 20,000. That does not represent a variation from year to year as much as it does a range for each year.

We are just not sure. The information that we gather is from the local enforcement agencies in the border States: California, Arizona, New Mexico, and Texas.

So, to the extent that we do not have sound, empirical data, it is difficult for us to make those determinations. But to the extent that we know that the volume is great, that does suggest that it is virtually a risk-free criminal enterprise.

The CHAIRMAN. In your written testimony, Mr. Olsen, you did mention that 50 private airplanes having an approximate value of $6 million are stolen. Is that each year.

Mr. OLSEN. Yes.

The CHAIRMAN. And it is not just the value of those planes; it is the fact of illegal smuggling into Mexico, which is an estimated $1 million of contraband—appliances, electronic equipment, and firearms—that is carried by these planes, these private aircraft.

My daughter and son-in-law had a similar experience just recently in California. They not only had their car stolen, but the thieves loaded it up while the owners were away for the weekend and they made three trips in the car, taking all the goods out of the house. They stole the car, too.

I would imagine that they don't go back and forth that frequently. But that $1 billion represents a great cost. It is duty free going into Mexico, evading taxation and so forth.

I suppose this is one of the reasons the problem is so important to Mexico, isn't it?

Mr. LANE. You are right, Mr. Chairman. The Mexicans consider that a very serious situation and have recently tightened up on contraband, smuggling into Mexico, with the rest that we have more Americans in jail on those charges than we did before.

We estimate that of the planes that we know are in Mexico that have been stolen or embezzled in the United States which are susceptible to recovery under the convention, approximately 70 percent have been involved in smuggling—one way or the other, or both ways. Sometimes they smuggle electronics and other items into Mexico and return to the United States with narcotics.

The CHAIRMAN. Thank you.

Mr. Olsen, from a law enforcement perspective, other than approval of this proposed convention, what, in your judgment and in the judgment of the Justice Department, should the United States be doing to combat vehicle and aircraft theft, especially along the United States-Mexico border?

Mr. OLSEN. As you know, the administration has opposed the Motor Vehicle Theft Act, so to that extent my hands are tied.

From a law enforcement perspective that bill would assist us in this effort. But the statistical evidence that we have received to date by asking law enforcement officers and agencies in the border States to what extent the chop shops dismantling the vehicles are a problem vis-a-vis the United States and Mexico shows that this is not perceived as a problem. The problem between the United States and Mexico regarding theft of cars is perhaps different in nature and character from the problems that we have domestically in the United States with respect to chop shops.

I think this convention is a great step in the right direction. It says quite a bit about the relations between the United States and Mexico in law enforcement efforts. First, it memorializes the willingness of both Mexico and the United States in law enforcement areas to work together to solve many of these problems.

Second, it indicates, to the extent that we may have been critical of Mexican law enforcement officials in this area, that there is a very different attitude and a great willingness to cooperate and assist us in this problem. To that extent, therefore, I would endorse this convention.

The CHAIRMAN. You mentioned that the administration does not support the Motor Vehicle Act. Is this attributable essentially to the economy and the problems that the automobile industry is having, and not wanting to impose any further burdens on it? Or, is there any defect in the law itself?

For example, testimony from the thieves was overwhelming that they don't go around selling transmissions and engines. Well, why? They are numbered and the thieves just will not take a chance being caught transporting anything with a serial number on it. So, they take the bumpers, the fenders, the body parts, everything that is not numbered.

Is there a chance that, if the economy picks up, the administration might take another look at this?

Mr. OLSEN. Well, my area of responsibility, jurisdiction, and expertise is the law enforcement area and not with respect to other policy

matters. I would have to defer to someone else to state what all the reasons are that the administration does not support the legislation.

The CHAIRMAN. Is it true, in accordance with your own testimony before the House, that the bill itself is a cost effective bill?

Mr. OLSEN. That is from the basis of a law enforcement perspective and certainly does not take into account considerations that may directly impact on the automobile industry.

As I did point out before, in the Justice Department we have no expertise and no knowledge of this, so we have to defer to others to make those final, ultimate determinations on cost effectiveness.

The CHAIRMAN. Thank you.

Mr. Lane, we have talked about the benefits of the convention to the United States. Is there anything further you would like to add with respect to the objectives of the Government of Mexico concerning the convention which has not yet been brought out this morning?

Mr. LANE. No.

Of course, I think one of the important concerns the Mexicans had, and I believe this is brought out in Mr. Olsen's written statement, is their concern that aircraft in particular, though motor vehicles also, may be returned under the old convention. There is not adequate provision for not returning them when they have been involved in felonies. The new convention addresses that directly.

There is one other point I would like to make in summary about the new convention.

First of all, the very important provision on notification by the Mexican authorities to us, at the American Embassy, will increase greatly the number of cars and aircraft of which we are aware. At present, we have to know about them and go to the Mexicans to try to recover them. This will greatly increase the number of cars that we are working with and aircraft as well. Under the present provisions, it would be a very time-consuming process. But the new convention, with its streamlined procedures, also is essential in this regard.

I would like to point out one thing. The numbers that I gave in my prepared statement on recovery are not very large. When we are talking about recovering 25 motor vehicles and 7 aircraft in 18 months, that obviously is only a miniscule fraction of the number that have been taken into Mexico, particularly with regard to motor vehicles. Those numbers refer only to the property recovered under the convention. But there is another program. The border areas have informal arrangements worked out already which have been in place for some years, particularly through the consulate general in Tijuana and the consulate general in Ciudad Juarez. Those numbers are more impressive and show the potential that exists throughout the country for recovery.

In the 1 year period ending June 1, 1982, 623 motor vehicles were recovered through the consulate general in Tijuana and 1 aircraft. In Ciudad Juarez, 98 vehicles were recovered and 4 aircraft.

That gives you an idea of the potential.

The CHAIRMAN. I have just a few more questions.

There are a couple of things that do not seem to be covered by the convention. For example, vehicles and aircraft that may be stolen outside the country of ownership do not seem to be covered by the

convention. If a U.S.-owned car is stolen in Mexico City, for instance, it is not within the meaning of the convention. Is this correct?

Mr. LANE. I'm sorry. Is that cars stole outside the United States?

The CHAIRMAN. I am talking about a U.S. car that is driven down to Mexico City and then is stolen in Mexico City. That is not covered by the convention, is that correct?

Mr. LANE. That is my understanding. It covers cars that are stolen in the United States and taken into Mexico. However, in the past, we have had experience, in fact very recent experience, in which a car that had been stolen in Mexico was recovered and returned under the same procedures.

The CHAIRMAN. There is one other area into which we may want to look in the future. Law enforcement authorities believe there is a substantially growing market for the sale of U.S.-owned off-road and agricultural vehicles in Mexico which may run as high as $75 million annually. Was this ever discussed? Why are these vehicles not among the items covered by the new convention? As the cost of those vehicles go up and the crime rate goes up, so too the costs of farming go up. These thefts are increasing.

Mr. LANE. Mr. Chairman, as I understand it, it was considered. They were not included in the previous convention and they are not now included. The main reason is it is a different type of problem. As I understand it now, there is no adequate means of identification of these vehicles. There is no equivalent of the VIN number on farm equipment and construction equipment. It would be a different type of problem to tackle.

The CHAIRMAN. We may have a few additional questions for you for the record. If you would respond to them, we will keep the record open for that purpose.

When the cost to the consumer is a billion dollars, that does not mean so much when you know that it is divided by a large number of people. But we just computed and estimated the cost per vehicle owner in two cities, and it is shocking.

If you live in the Brooklyn Borough of New York City, whether or not you have a car stolen, you are paying $355 a year for theft insurance. If you are living on the south side of Chicago or in the Loop, the rate is not quite as high. This is one time we are happy not to have Chicago as the lead city. But the cost is still $185 a year for car theft insurance in Chicago. In downtown Los Angeles, theft coverage is $90 per year. If you have a car stolen and if you have it fully covered by insurance, it will be a shock to you because you never get the full recovery cost back. What you get from the insurance company is the Blue Book value, and not the replacement cost.

Therefore, you are still out of pocket. You are out not only your insurance cost but the difference between the Blue Book value and the actual replacement cost.

This is a business that is hitting literally every American family that owns an automobile. This convention will help plug up this situation and will be of assistance. I fully support ratification of this convention and can assure you that we will move with dispatch on it.

Mr. Olsen, could you provide the committee with a written policy statement on S. 1676, the Motor Vehicle Act, from the Department of Justice?

Mr. OLSEN. Well, sir, the Department of Justice would not be speaking on behalf of the administration. That would have to be something we will have to clear through OMB. I will certainly advise my superiors of your request.

The CHAIRMAN. If you would, please, I would appreciate it. As I understand it, the Justice Department is all for it, but OMB just does not want any cost added to the automobile manufacturers' cost. But what are the sources of the cost? Are we in business just to create business for the automobile makers, or are we in business to serve the consumers? They are the ones who are being socked. They are the ones paying the big cost. They are the ones who are causing this terrible inconvenience.

Sure, if I was still in business, I would like to be making some products and profits. I sometimes wished people would steal more cameras when I was making cameras. [General laughter.]

But we put serial numbers on every camera we made and some of the parts as well. That cut down on theft a great deal.

We did it as a service to our consumers. I think we ought to do the same thing here. What is good for the goose is good for the gander. I'll speak to my friends in Detroit and will simply say let's get on with this now. Rampant vehicle theft is something that we simply cannot allow to continue. We are not going to use this as a means of getting the automobile industry out of its slump. Let's get the economy to recover on a very broad basis and let's not try to do it in this way.

Here is an area that we can plug up, and I commend the Justice Department for taking a very forthright position on this. It is a method of crime prevention and we ought to move in this direction with dispatch. I will do the best I can to reason with OMB on this. We have reasoned out our problems before and I think we can again.

Mr. OLSEN. You made a reference to the position taken by the Justice Department, Mr. Chairman. The position of the Justice Department, as a part of the administration, is that we oppose the bill. I want to make sure that is very clear because I can assure you that I will be asked when I leave here what was the exchange here this morning.

The CHAIRMAN. Well, having talked to enough people in the Justice Department as individuals, I know that they support the principle and the concept. The administration position is set by OMB in this case, and we respect that. That is why I said we will have to reason with our friends in OMB.

Thank you very much, both of you. We appreciate your appearance here today.

Mr. OLSEN. Thank you, Mr. Chairman.

Mr. LANE. Thank you.

The CHAIRMAN. Our next panel will consist of the following witnesses: Mr. Paul W. Gilliland, president of the National Automobile Theft Bureau, Palos Hills, Ill.; Mr. Benjamin B. Killingsworth, commander of the Border Patrol Division, California Highway Patrol, San Diego, Calif.; and Mr. Allan I. Mendelsohn, of Ward & Mendelsohn, Washington, D.C.

Gentlemen, please be seated.

Mr. Gilliland, if you would be good enough to begin, we would appreciate it.

STATEMENT OF PAUL W. GILLILAND, PRESIDENT, NATIONAL AUTOMOBILE THEFT BUREAU, PALOS HILLS, ILL., ACCOMPANIED BY CHARLEY EVANS, MANAGER, SOUTHWESTERN DIVISION, NATIONAL AUTOMOBILE THEFT BUREAU, DALLAS, TEX.

Mr. GILLILAND. Mr. Chairman, my name is Paul W. Gilliland. I am president of the National Automobile Theft Bureau. The National Automobile Theft Bureau is a crime prevention organization that provides assistance to law enforcement agencies, insurers, and the public. NATB cooperates with duly constituted authorities in the investigation and prosecution of vehicle crimes. The NATB assists duly constituted authorities in the location and identification of stolen motor vehicles, trailers, agricultural, and off-road equipment.

The bureau was founded in 1918 and is supported by approximately 550 property casualty insurers.

Before specifically addressing questions related to the 1981 convention, I would like to touch briefly upon the history of the first Convention for the Reciprocal Return of Stolen Vehicles.

NATB's Southwestern and Pacific Coast Divisions for many years have had principal responsibility for the bureau's activity in the Republic of Mexico.

During the early 1930's, the bureau was actively involved in recovering stolen vehicles from the United States located in Mexico. This crime problem continued to increase. In the mid-1930's, it had reached such serious proportions that NATB representatives from Texas and the Pacific Coast Division approached Dwight Morrow, who at the time was the U.S. Ambassador to Mexico. They requested his guidance on how to improve the existing condition.

Ambassador Morrow suggested the NATB representatives contact appropriate personnel in the U.S. State Department, which they did. Existing conditions were reviewed with State Department personnel.

Additional studies by Government authorities resulted in a joint effort by United States and Mexican officials to draft the first Treaty for the Reciprocal Return of Stolen Vehicles. The convention was ratified, then signed by President Franklin D. Roosevelt on June 24, 1937.

Simply stated, from the viewpoint of U.S. victims, vehicles stolen in the United States and taken into Mexico could be processed for return to this country by means of documents submitted through diplomatic channels to the Mexican Government.

A treaty package during the early days of the convention included a series of affidavits to establish ownership of the vehicle and that the vehicle had been stolen or converted.

This was all of the information necessary, because during the late 1930's, automobile ownership in the United States was recognized by registration certificates and ownership was transferred by bills of sale. Police records on vehicle crime were almost nonexistent and police reports were prepared only on a "need basis."

As the years passed, treaty filing procedures became more complicated. A concept seemed to prevail that if additional documents were included in the treaty package, the chances for a vehicle's release improved.

To add to the paperwork, many States enacted certificate of title

95-918 O - 82 - 3

laws during the 1950's and the 1960's. Additional official documents now were available for inclusion in the treaty package.

As personnel changes occurred in the various Government offices handling the treaty filings, extra documents were expected and required.

All documents that were included had to be prepared as legally recognized documents in the United States. In most cases, this meant the documents had to be notarized. If a document were questioned by the Mexican Government, they would require the document which had been notarized in the United States also to be authenticated by a Mexican Consul located near the area where the document had been prepared. This "legalizing" cost upward to $11 per page and multiple copies of the documents were now required.

The CHAIRMAN. Mr. Gilliland, we will have to adjourn by 12 o'clock at the latest. That will give us 45 minutes for this panel. So, I am afraid if we go through your entire text, we will not have time for questions, and I would prefer to spend the time on questions. We have read each of your written statements.

Mr. GILLILAND. I would be very happy to summarize, Mr. Chairman.

Mr. CHAIRMAN. The entire text of each of your statements will, of course, appear in the record.

Mr. GILLILAND. NATB recommends ratification of the revised convention because we believe that it presents potential improvement in returning stolen and embezzled vehicles and aircraft. It should be realized that the only way for this convention to be effective is for local Embassy consul to aggressively protect the rights and privileges afforded U.S. citizens under the treaty through the aggressive pursuit of substantial compliance with its terms. At the same time, Embassy consul must aggressively deal with noncompliance with the treaty or overt treaty violations.

That would conclude my statement.

[Mr. Gilliland's prepared statement follows:]

PREPARED STATEMENT OF PAUL W. GILLILAND

My name is Paul W. Gilliland, I am president of the National Automobile Theft Bureau. The National Automobile Theft Bureau is a crime prevention organization that provides assistance to law enforcement agencies, insurers, and the public. NATB cooperates with duly constituted authorities in the investigation and prosecution of vehicle crimes. NATB assists duly constituted authorities in the location and identification of stolen motor vehicles, trailers, agricultural and off-road equipment. The Bureau was founded in 1912 and is supported by 550 property-casualty insurers.

Before specifically addressing questions related to the 1981 Convention, I would like to touch briefly upon the history of the first Convention for the reciprocal return of stolen vehicles.

NATB's Southwestern and Pacific Coast Divisions, for many years, have had principal responsibility for the Bureau's activity in the Republic of Mexico. During the early 1930's the Bureau was actively involved in recovering stolen vehicles from the United States located in Mexico. This crime problem continued to increase. In the mid-1930's it had reached such serious proportions that NATB representatives from Texas and the Pacific Coast Division approached Dwight Morrow, who at the time was the United States Ambassador to Mexico. They requested his guidance on how to improve the exsting situation.

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As the years passed, treaty filing procedures became more complicated. A concept seemed to prevail that if additional documents were included in a treaty package, the changes for a vehicle's release improved.

To add to the paper work, many states enacted certificate of title laws during the 1950's and 1960's. Additional official documents now were available for inclusion in a treaty package.

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All documents that were included had to be prepared as legally recognized documents in the United States. In most cases, this meant the documents had to be notarized. If a document was questioned by the Mexican government, they would require the document which had been notarized in the United States to be authenticated by a Mexican Consul located near the area where the document had been prepared. This "legalizing" cost upwards to $11.00 per page and multiple copies of the documents were now required.

During the mid and late 1970's requirements on treaty filing became even more difficult to complete. All submitted documents were required to be authenticated by Mexican Consuls before they would be accepted in Mexico. This requirement was not only cumbersome, but was extremely expensive.

For all practical purposes the original treaty became inoperative. This situation lead to the development of the revised Convention.

To further understand the need for the revised Convention and the prospects for improving the current situation, it is necessary to provide some background information concerning the situation in the Republic of Mexico:

There is no central registry for vehicles in the Republic of Mexico;

Vehicle registration information is available only where you have a registration number and the state that issued the registration;

All registration filings are manual in nature;

There is no national or international stolen property file in existence such as we have grown accustomed to here in the United States;

There is no exchange of stolen vehicle information on an international level between the United States and Mexico.

Additionally, the only existing controls relating to stolen vehicles and equipment transported from the United States into Mexico are the limited controls established by Mexican Customs; the United States Government has no effective controls over southbound traffic. This open border policy, thus, presents little deterrence to the transportation of stolen vehicles and equipment from the United States into Mexico.

Although the revised Convention is on its face a reciprocal agreement, our experience has indicated that the preponderance of the problem concerns vehicles stolen in the United States and transported into Mexico. In analyzing any type of criminal activity one must take into consideration the monetary aspect. This monetary aspect significantly contributes to the problem of the theft of vehicles from the United States and their subsequent transportation into Mexico.

First, it must be realized that basically similar vehicles have significant differences in retail values depending on whether they are sold in Mexico or the United States. For example, a 1982 Chevrolet Caprice manufactured in the United States with a price of approximately $11,000 in the United States, assembled and purchased in Mexico would cost in excess of $25,000. United States vehicles transported into Mexico and legally registered and operated there are worth about

two and a half times their United States value. It must be added that vehicles manufactured in Mexico do not have the same degree of opulence or quality as similar vehicles assembled in the United States. This situation leads to increased demand for U.S. assembled units.

Another economic aspect is that the Mexican Government assesses a high tariff on all U.S. vehicles legally imported into the Mexican interior. This duty must be paid prior to the vehicle's registration. As an example, a 1980 Ford Fairmont imported into Mexico would face a duty of approximately $20,000, which amount is in addition to purchase price, transportation, and other import costs. A full size Ford sedan would incur an import duty in the area of $30,000 to $35,000, again in addition to purchase price and import costs.

The open border policy, the technical level of communications and records in the Republic of Mexico, and a demand for U.S. assembled vehicles in the Mexican interior provide ample incentives for the illegal introduction into Mexico of vehicles stolen in the United States.

The significant value differences between comparable units in the United States and in Mexico is even greater when one considers off-road machines such as agricultural and construction equipment. This equipment, which in the United States has significantly higher values than motor vehicles, has even greater demand and value in the Republic of Mexico. Please note: The revised Convention does not apply to off-road machines, but this equipment constitutes a significant part of the over-all problem of the illegal exportation of stolen property from this country. In this regard, the NATB has supported the Motor Vehicle Theft Law Enforcement Act of 1981 (H.R. 4325, S. 1676). The export provisions of this legislation could have a significant impact upon the problem of both stolen vehicles and stolen off-road equipment.

The significant value differences in comparable equipment between the United States and Mexico, on occassion, lead to official corruption involving government personnel. Recent indictments of Mexican federal police officials and others returned by a Federal grand jury in San Diego are examples of profit motivating the theft and introduction into Mexico of motor vehicles.

Stolen motor vehicles recovered in Mexico are either placed in service by government authorities or sold at auction. When the vehicles are sold at auction they become legally available to Mexican citizens at considerably less than the normal importation cost. The proceeds of sale go to the governmental entity involved.

It is certainly clear that the economic situation causes the transportation of stolen vehicles from the United States to Mexico.

The revised Convention promises improvements in three important areas. First, the revised Convention provides for a periodic notification, at least monthly, concerning vehicles seized in one country which are registered or otherwise documented under the laws of the other country. This is an important improvement since under the old Convention there is no requirement for notification concerning seized or recovered vehicles.

A second improvement is that the revised Convention permits requests for the return of vehicles to be submitted by any consular office of the requesting state to the authority of the requested state having custody of the vehicle. This de-centralized approach offers potential for effecting the release of vehicles recovered in remote parts of the Mexican republic. Finally, the revised Convention contains reasonable limitations concerning the documents necessary to support a request for the release of a vehicle. These provisions, if honored, would eliminate consular authentication, multiple translations, and unnecessary documents, such as bills of sale in the case of a vehicle titled in the name of the owner seeking the release.

The NATB recommends ratification of the revised Convention because we believe that it presents potential improvement in returning stolen and embezzled vehicles and aircraft. It should be realized that the only way for this Convention to be effective is for local embassy counsel to aggressively protect the rights and privileges afforded U.S. citizens under the treaty through the aggressive pursuit of substantial compliance with its terms. At the same time, embassy counsel must aggressively deal with non-compliance with the treaty or overt treaty violations.

At this time I would introduce Mr. Charley Evans, Manager of NATB's Southwestern Division, headquartered in Dallas, Texas. Mr. Evans, by virtue of his position, is in day to day supervision of operations resulting in the return of stolen vehicles recovered in the Republic of Mexico.

Thank you for the opportunity to appear before this committee. If there are any questions, I would be happy to address them at this time or at the conclusion of Mr. Evans' testimony, at the pleasure of the committee.

PREPARED STATEMENT OF CHARLEY EVANS

Thank you, Mr. Gilliland, and thank you, Mr. Chairman and members of the committee.

Almost all treaty filings on stolen automobiles and trucks discovered in Mexico are filed through our Divisional office in Dallas. We maintain a close liaison with the United States Embassy, Citizens Consular Services Office in Mexico City. Communications by telephone or teletype is ongoing almost daily.

At the present time, the Mexican authorities have, at their suggestion, implemented, in principal, the filing procedures for a new treaty. The Citizens Consular Services Office is presently receiving lists of vehicles from the Federal Automobile Registry Department and the Attorney General's office in Mexico City for checking against outstanding theft records in the United States. Through an arrangement established with our office in Dallas, such lists are directed to us on the same date that they are received from the Mexican authorities. The list is immediately checked against outstanding theft reports in all available indices and the information developed is transmitted back to the Embassy.

Under the criteria of the new treaty, a time limit of 45 days is allowed to file a claim for returning a vehicle to the United States. The 45 day period starts at the time of notification by the Mexican Government to our Embassy. The 45 day period was implemented in March of this year. Our experience to this point is not sufficient to judge whether or not the 45 days will be ample time to complete a treaty filing. Some cases require considerably more time than others.

There is substantial evidence to indicate the Mexican authorities are not including all non-Mexican assembled vehicles on their lists of seized vehicles. Cases are called to my attention where vehicles were sold at public auction by the Federal Automobile Registry Department and were never reported to the U.S. Embassy. There is further substantial evidence that no vehicle appears on the list, if the public VIN plate has been removed. There have been a number of cases recently, where vehicles were sold at public auction with no explanation from the Mexican authorities even though the treaty process was filed and pending.

All vehicles seized in the Republic of Mexico are seized under violations relating to illegal entry. There are no automated records available for checking against stolen reports. Seizures will always be connected to an evasion of taxes or illegal entry. Illegal entry violations seem to be superior to other crimes involving vehicles.

At the present time my office has 70 treaty cases in progress since January 1st of the year. These cases are in various stages of completion and new cases are being added at the rate of 6 to 8 per week. At the time initial contact is made with the owner of the vehicle, no information is available as to the location of the unit in Mexico or its general condition. As a matter of fact this information is not known until such time as the Mexican Government decides to release the vehicle to the U.S. representative. In order to meet the 45-day limit, we simply must proceed with all diligence and under the assumption the vehicle is in fair condition and the return of it from Mexico will be economically worthwhile. Many such cases turn out to be fruitless as the vehicle may have been stripped or wrecked at the time the release is finally decided. This comes about as a result of the tight restrictions surrounding vehicle impound lots and storage facilities by the Mexican Authorities. Prerelease inspections are almost nonexistent. The U.S. authorities are not permitted to enter an impound lot except under special permission.

Information or the names of individuals from whom the vehicle was seized is generally unavailable.

Depending on the nature of the seizure and the authorities who made the seizure, occasions arise where a release can be accomplished with little effort. Because of limited storage space as well as the inability to provide adequate security, it is not uncommon for the Mexican authorities to elect to release a vehicle under conditions somewhat less than full treaty requirements.

It is not illegal for Mexican Authorities to release stolen vehicles for return to this country if there are no known descenting parties. These releases are legal and proper. The Mexican authorities will generally require an official copy of

the police report of theft and a letter indicating power of attorney naming the person to whom the release should be made. Document requirements will vary from case to case.

Such informal releases make up the bulk of all releases of automobiles from the Republic of Mexico. The majority of such releases are what we refer to as "border releases" and generally occur within the free trade zone.

Information on stolen vehicles discovered in the Republic of Mexico has been averaging over 1,000 vehicles per year. Of these known locations our records reflect that around 600 vehicles will be returned to the United States through some form of official release. Full formal treaty filings will account for no more than 13 percent of the total releases authorized.

These figures are based on the best evidences we have available and will not include many local border releases negotiated by Municipal Police Officers assigned at the border and will not include a number of releases negotiated privately by individual owners and/or private entrepreneurs. Many individuals work up and down the border and recover automobiles from Mexico by offering bribes and large rewards for the releases. Our Bureau does not condone such activity and discourages it to the fullest extent. These practices contribute much of the problem experienced along the border by law enforcement in effecting return of stolen property to the United States.

In summary Mr. Chairman, I would like to reiterate on the need for progressive policies by our Consul Representatives in Mexico, to insure compliance with the treaty and to seek the privilege of physically inspecting all seized U.S. assembled vehicles and take advantage of all legal releases where possible. I believe that the provisions of this treaty cannot reach peak efficiency without aggressive action by U.S. Consuls.

I encourage consideration of the development of better controls over the exporting of vehicles and to the establishment of improved defenses against the ease with which stolen vehicles are removed from the United States.

Mr. Chairman, I thank you and members of your committee for allowing me to present my views of this matter.

The CHAIRMAN. Thank you very much.

Mr. Killingsworth, Senator Hayakawa had wanted very much to be here to introduce you and to hear your testimony. We are sending a copy of the testimony over to him. He now is in a markup of the Agriculture Committee, a committee of great importance to California, and apparently is unable to leave. I have a note from him saying he still hopes to get here. But if he does not make it, I want to express his regret and want to warmly welcome you.

STATEMENT OF BENJAMIN B. KILLINGSWORTH, COMMANDER, BORDER PATROL DIVISION, CALIFORNIA HIGHWAY PATROL, SAN DIEGO, CALIF.

Mr. KILLINGSWORTH. Thank you, Mr. Chairman.

As a law enforcement officer, I want to express my thanks to you for your interest in this subject, which in my opinion really does not get nearly the attention it deserves.

I will summarize my statement.

As you may know, the crime of vehicle theft is a particular problem in California. We have about 10 percent of the population but about 16 percent of the vehicles that are stolen are stolen in California.

We do have a better recovery rate than the rest of the country. We have a recovery rate of about 82 percent, which does not mean that all vehicles are recovered intact, by any means. But that many are identified as being recovered.

We have found that along the Mexican border, where my division is located, our recovery rate is considerably lower than our statewide

average. We surmise that the reason for this is many of them are going across the border never to be heard from again.

Because the formal treaty, the Treaty of Hidalgo, has not been workable, there are informal processes for bringing about the same result. We have established what we call our Mexican liaison program. Until recently, it only involved one officer. But, as of July 1, 1982, four officers will be working the detail. Interestingly enough, the process we have been using for the last 2 years is virtually identical to the process called for by the new treaty, and it works very well.

In 1980, we recovered 667 stolen vehicles, and in 1981, something over 700 vehicles were recovered using this process.

So, it does work and it needs to be formalized so that we can use it in all cases.

Now, even though this treaty certainly is called for and should be ratified, I would like to point out a couple of things that you may already know. The treaty will not solve the problem. It is a good step, but the problem is much greater than the treaty.

First of all, what we have to do is slow down and prevent if we possibly can, or at least reduce the number of vehicles that are going into Mexico. As you have said, anyone can drive a stolen vehicle across the border into Mexico, because there is virtually no risk. We need to set up southbound checkpoints at all of our border crossings so that there is a risk as a deterrent to those who are taking these vehicles into Mexico. That is the first step.

The next thing we need to do is to bring about greater cooperation by the Mexican Government in assisting us in returning these vehicles.

Now, this is not to say that we don't get a tremendous amount of cooperation from some agencies. We work very well together. In fact, the amount of cooperation improves every day. Some Mexican officials are even initiating cases and asking for our assistance in helping to solve them and to prosecute the guilty parties.

But, unfortunately, not all Mexican agencies are that cooperative; some refuse to cooperate at all while others only give us lip service. Frankly, I personally do not think this treaty will change that to any great extent. I think we need to apply continuous pressure at the highest levels of the Mexican Government to bring about true, real cooperation. Only in this way can we really solve this problem.

Thank you.

[Mr. Killingsworth's prepared statement follows:]

PREPARED STATEMENT OF BENJAMIN B. KILLINGSWORTH

I appreciate the opportunity to appear before your committee to offer California's evaluation of the proposed treaty which would facilitate the return of stolen vehicles from Mexico.

The need for such a treaty is the outgrowth of two factors: first, the substantial increase in vehicle thefts in the United States, with a parallel and perhaps even greater growth in the number of stolen vehicles which are transported across our southern border, and

Second, the inadequacy of the present agreement, known as the Treaty of Hidalgo executed in 1936, the inadequacy of this document in facilitating the return of stolen and embezzled vehicles and aircraft from Mexico.

The critical void in the existing process is the absence of any requirement to notify the other country when a vehicle from across the border is impounded, stored or otherwise detained. The Treaty of Hidalgo establishes a paperwork process for recovering a stolen vehicle once that fact has been established. But

it is infrequent that we would become aware in California, for example, of a stolen vehicle's presence in Mexico because there is no requirement for the Mexican Government, at any level, to notify us that they are holding a vehicle registered in the United States, which may be stolen. The typical outcome is a lien sale within Mexico, and the vehicle then evaporates, for all intents.

The paperwork attached to the present process, even if set in motion, is cumbersome, time-consuming, and fraught with unexpected delays. The tendency has been to avoid this process, because it rarely works anyway, and to rely on less formalized recovery procedures, which I will outline more fully in a moment.

Let me first contrast the existing treaty with the new one awaiting ratification, to provide an insight to the advantages we expect to realize.

The major change, as you would expect, is a requirement that each government notify the other whenever a vehicle registered in the other nation is stored or seized for any reason. The notification usually will be made through consulates or embassies, and the country in which the vehicle is registered then has 45 days to request its return, providing the necessary official theft report and ownership documents. The paper trail has been shortened considerably as well, meaning that the entire process should be both simplified and shortened—a real advance which should assist not only government, but vehicle owners and insurance companies, which are deeply involved.

The significance of this proposed treaty is illustrated by the problem of vehicle theft, which has become one of America's most serious property crimes. In 1980, for example, 1,114,000 vehicles were stolen in the United States, representing a value of $3.2 billion. And this total does not even include such heavy vehicles as construction and farm equipment, which also have become frequent targets of thieves.

The crime of vehicle theft is particularly virulent in California. Sixteen percent of all thefts occur there. Fortunately our recovery rate is considerably higher than the national average of 55½ percent. We locate and return about 82 percent of all stolen vehicles. We identified a considerable difference in rates within our own state, however, when we looked at individual areas. In our border division area, that territory adjacent to the Mexican border, the recovery rate is about 76 percent, and the difference, we think, lies in the disappearance of a considerable number of vehicles into Mexico.

We are not really sure how many stolen vehicles make their way into Mexico. One reliable estimate puts the annual figure at ten to twenty thousand. And the recovery rate of vehicles from Mexico is very low.

Because the existing process is largely ineffective, informal recovery techniques have evolved, as I noted. The California highway patrol, for example, created a Mexican liaison officer's position to set up an informal process for returning stolen California vehicles from Mexico. In 1980 this resulted in location and recovery of 667 stolen vehicles valued at $2.5 million. In 1981, the recovery figure jumped to 712, with a dollar value of $3,273,000.

This success only underscores the need for a formalized, effective process which will facilitate not only California's recovery efforts, but those of all our states, particularly our border states which have the proportionately greater problem.

That new process is before you today, in the form of a convention which sets forth a mutually agreeable method for the rapid and efficient return of stolen vehicles from either side of the border into the country where the vehicle owner resides.

This convention was signed by representatives of both nations January 15 of last year, and now awaits only formal ratification by both nations. The new treaty not only streamlines the procedure for returning stolen and embezzled vehicles and aircraft, it also sets up a mechanism by which additional vehicles may be checked as possible stolens.

Because this treaty offers vast improvement in what has been a very frustrating and often unsuccessful process, I urge your favorable vote for ratification. While I speak for California, I should note that the International Association of Chiefs of Police, in which the California Highway Patrol holds membership, recently adopted a resolution urging ratification as well.

My discussion of the treaty would be incomplete, however, if I did not point out two shortcomings. The present language of the treaty defines "vehicle" in a manner which excludes both construction equipment and farm equipment. The theft of both is mounting in the United States, and undoubtedly some of these stolen items are being moved across the border. The new treaty unfortunately ignores these vehicle types.

The second void deals with vehicles (and aircraft) registered in one country but stolen and recovered in the other country. The treaty makes no provision for their return, and even though this type of theft is less frequent than the theft which occurs in the country of registration followed by transport across the border, the problem should be dealt with.

I realize that amendments at this point could confuse the ratification timetable, but I think you should be aware of these loopholes which ultimately should be closed by means of amendments.

In summarizing, I think it is clear that the flow of stolen vehicles into Mexico constitutes a problem of sufficient concern to recommend prompt ratification of the proposed treaty as a major element in restoring vehicles to their rightful owners through international cooperation.

It is my understanding that Mexico is prepared to ratify, and I encourage you, on behalf of the California Highway Patrol—as well as the citizens of California—to ratify the convention for the United States at your earliest convenience.

I am very grateful for this opportunity to address you, and I will be happy now to respond to any question you may have.

The CHAIRMAN. Thank you.

I would be very happy to transmit to the Mexican Government, any specific suggestion you may have and to try to emphasize to them and to the President of the Senate that the Inter-Parliamentary Conference in Santa Barbara indicated this is a problem about which we really want Mexico's assistance. I would be very happy to do that.

Mr. Mendelsohn, we are pleased to hear from you now.

STATEMENT OF ALLAN I. MENDELSOHN, WARD & MENDELSOHN, P.C., WASHINGTON, D.C., ON BEHALF OF UNITED STATES AIRCRAFT INSURANCE GROUP, SOUTHEASTERN AVIATION UNDERWRITERS, AND NATIONAL AVIATION UNDERWRITERS

Mr. MENDELSOHN. Thank you, Mr. Chairman. My name is Allan Mendelsohn. I am a former member of the Office of the Legal Adviser of the Department of State. I also had the pleasure of voting for you when you first ran for the Senate, Senator Percy. It was my pleasure then and it is my pleasure to appear before you today.

The CHAIRMAN. Why, you have touched my heart. [General laughter.]

Did you come from Cook County, Ill.?

Mr. MENDELSOHN Yes, Cook County.

The CHAIRMAN. How many times did you vote? [General laughter.]

Mr. MENDELSOHN. I can't remember that year, Senator. [General laughter.]

I join Mr. Killingsworth in thanking you for your auto theft bill. I think, if you put aside General Motors and perhaps the predecessor in my seat at this witness table, the vast majority of the American public supports your bill and we would all like to see it promptly enacted.

I have the pleasure today of representing a major segment of the American aviation underwriting industry—the United States Aircraft Insurance Group, Southeastern Aviation Underwriters, and National Aviation Underwriters. The problem of stolen aircraft has been one of increasing importance to us.

I am accompanied here today by two officials of two of the aviation underwriters—Mr. Howe from National, and Mr. Cassese from USAIG. Both of these gentlemen are experienced pilots. They have

95-918 O - 82 - 4

been in the business of trying to recover stolen aircraft for 10 years. One of them even on occasion has been offered $100,000 to make a drug run to Colombia, or to Mexico.

The problem of stolen aircraft seems to escalate out of all proportion. The Justice Department may tell you that this problem only involves the smuggling of contraband. But in all of the cases we have investigated involving stolen aircraft, it has not been contraband smuggled into Mexico. Rather, it has been drugs smuggled out of Mexico as well as drugs smuggled out of Colombia.

In the past 2 years, the three underwriters who I have the pleasure of representing, have had approximateely 140 aircraft stolen. Their total insured value was in excess of $30 million. Of these 140, 73 were never recovered. We have every reason to believe that several of these 73, and perhaps the majority, are in Mexico or Colombia today.

One of the most serious problems here, unlike in the automobile segment, is that in aviation, with the modern design and the modern capability of aircraft, we are not merely facing a cross-border problem. It is a hemisphere problem. We have tried to impress this fact upon our Government, with some degree of success.

The treaty before you now, as Mr. Killingsworth says, is a first step. We hope the Government will move forward to enforce it so that the problem might someday be attacked and solved in a much more broad context than simply the Mexican treaty.

Let me say that we, to a certain extent also like the automobile industry, are faced with a governmental problem, which we alone are unable to solve. This is the Mexican and Colombian practice of simply laundering out the U.S. registration number of an aircraft. They will paint over the number on the tail of the aircraft. The number might be N–5879M, and they will paint it out and will put an X number, meaning Mexico, or an XC number meaning that the aircraft belongs to the Mexican Government. We often will not even know that the particular aircraft was one that was stolen from our insured. When its U.S. number is laundered out, the aircraft simply disappears.

We have made repeated complaints about this practice. We think it should be raised at very high levels of the international aviation community, because it involves a very clear, admitted, conceded, violation of international law. Yet, it happens every day of the week.

Southeast Aviation Underwriters just told me yesterday that they have four insured aircraft—each one worth between $300,000 and $400,000—that are right now in use by Colombia. Two are in use by the Colombian Navy and two by the Colombian Air Force. They simply had their U.S. "N" number deleted, and a Colombian number put in its place. The FAA never is told about this change. Nor, apparently, does the FAA make much of an effort to try to track this illegal practice down.

If some arrangements could be made to do that, it would be very helpful to us in the enforcement of this treaty. But, unless some effort is made to do that, Mr. Chairman, this treaty will hardly help us because a stolen aircraft will never even come in under the treaty if its "N" number is first replaced by a Mexican "X" number.

It is true, as the State Department says, that the means of identifying a U.S. aircraft and the means of telling the American Government that a U.S. aircraft has been stolen are there in the treaty. But

these provisions will not come into effect unless and until the illegal process and practice of laundering out American registration numbers is brought to a speedy halt.

We submitted 26 pages of testimony on the subjects being discussed here today. In a way, our testimony represents the 10 years that we have worked in this area. It has been a frustrating effort. We have made some progress, however, and we think the treaty before you might also help to make some progress.

But, again, we think the treaty is only a first step. We are convinced that whether or not the treaty succeeds depends upon the good faith and enthusiasm of our own Government—not so much the Mexican Government, but our own Government—in putting the provisions of the treaty to work.

We have always been prepared to cooperate with the State Department, the Justice Department and the FAA. I must say that we have gotten our finest cooperation from the U.S. Customs Service. Without their participation in the past 2 or 3 years, we would have had almost no branch of the U.S. Government upon which to depend.

We would like to remedy that situation, Mr. Chairman. We would like to be able to work very closely with the Department of State and very closely with the Department of Justice. If this committee or if you personally have any way of helping to bring that about, Mr. Chairman, we would be in your eternal debt.

[Mr. Mendelsohn's prepared statement follows:]

PREPARED STATEMENT OF ALLAN I. MENDELSOHN, ON BEHALF OF UNITED STATES AIRCRAFT INSURANCE GROUP, SOUTHEASTERN AVIATION UNDERWRITERS, AND NATIONAL AVIATION UNDERWRITERS

Mr. Chairman and Members of the Committee, we are pleased and honored to be able to appear before you today in order to give you our views about the proposed Convention with Mexico for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaty Doc. No. 97-18). My name is Allan I. Mendelsohn. I am a former member of the Office of Legal Adviser of the Department of State and I am now a lawyer here in Washington with the firm of Ward & Mendelsohn. I am accompanied by Tony Cassese of United States Aircraft Insurance Group (USAIG), Deanes Rowedder of South Eastern Aviation Underwriters (SEAU) and Leo Howe of National Aviation Underwriters, who are friends, clients and major aviation underwriters in this country. Together, our testimony represents the interests of at least one third of the market for general aviation insurance in the United States.

As insurers of general aviation aircraft, which frequently turn up in Mexico and elsewhere in Latin America as a result of a suspected theft or embezzlement, we have been involved with the proposed treaty and its 1937 predecessor for almost ten years. We hope you will find our views and experience to be helpful in deciding whether or not to report the treaty out favorably for advice and consent.

We would like to tell you at the outset that, while we believe the treaty should be ratified, we also believe it is essential that the legislative history of the ratification process should clearly show how the Senate of the United States believes the treaty should be interpreted and enforced. Unless this kind of unambiguous legislative history is clearly established for the benefit of the Executive Branch of our Government as well as the Government of Mexico, we have every reason to believe that this treaty will become as unenforceable as its 1937 predecessor.

INTRODUCTION: THE OVERALL PROBLEM

Before discussing that predecessor treaty and the unpleasant experiences encountered by the United States Government in trying to enforce it, we think it might be useful if we gave you a thumbnail introduction to the overall prob-

lem at least as it is seen from our eyes as insurers of general aviation aircraft. We see the problem and the challenge principally in terms of the illicit but burgeoning drug trade carried on from countries like Mexico and Colombia to the streets and alleys of the major cities of our country. We estimate that each year hundreds of small private aircraft take off from airports in the United States on journeys south to pick up cocaine, marijuana, quaaludes and other drugs for smuggling into the United States. If the trip is successful, the cargoes carry street values in the tens of millions of dollars.

As an example, we have attached as Exhibit No. 1 a recent article from the Washington Post reporting on two private aircraft caught by the U.S. Customs Service. One had a cargo of marijuana with an estimated value of $500,000. The other had a cargo of cocaine with an estimated value of $130 million. While these two aircraft were caught by our Customs Service, other aircraft and their pilots manage to succeed—and if not on the first attempt then on the second. Others do not succeed, however, and there are innumerable cases where aircraft flying abroad crash or are by some other means seized by Mexican or Colombian or other foreign officials who first conclude that the aircraft was involved in illegal activities and who then confiscate it for their own personal or official use.

To give you some idea of the magnitude of this activity, we are attachng as Exhibit No. 2[1] a 19-page document which was published by the Colombian Government and which listed some 120 U.S. registered aircraft seized and confiscated by that Government as of February 25, 1980. We understand the Colombian Government publishes such a list periodically and, though we do not have the most recent edition, we understand it is considerably longer. Naturally, no one can ever make an accurate count of the numbers of these aircraft. Mexico does not publish such a list, but it is reliably estimated that Mexico has confiscated upwards of 400 U.S. registered aircraft. We are attaching as Exhibit No. 3 a recent article on this subject. It is a comprehensive and largely accurate article. It is one of many that cites the figure of 400 as the number of U.S. registered aircraft believed to have been seized by Mexican authorities.

This then should give you some idea of the magnitude of the problem facing us. These aircraft have a total value well in excess of $100 million. As aircraft become more sophisticated electronically and aerodynamically, their cost and value increase very substantially. Their use in the increasingly profitable drug smuggling trade cannot be expected to decrease. As a matter of fact, our own statistics show that it is the more expensive and more sophisticated newer aircraft that are now being increasingly used on the runs to Colombia, Peru and the other more distant newly emerging drug sources.

THE POSITION OF THE INSURERS: I

The question you probably now have is whether we insurers think there is anything wrong about foreign countries confiscating these aircraft. Our answer is concise: whenever an aircraft has been used for illegal activities with the consent or even acquiescence of its owner, the foreign government has every right to confiscate it and use it however it wishes. But we think it is a totally different story when the owner was totally innocent and was in no way involved in the illegal activities. There are in general two types of situations where these kinds of circumstances can occur.

Stolen aircraft

The first is the out-and-out-theft—where the owner leaves his aircraft parked and locked on a local landing strip, someone jimmies the lock, opens the door and then flies off on what may ultimately be a drug run. You may think this is an unlikely scenario, but that is not the case. Private airplanes are notoriously easy to steal. Most of the door locks on these airplanes are almost as easy to jimmy and open as the average door lock on an automobile. It may take as long as five minutes for an agile person with a wire coat hanger to open the door lock on an average G.M. car. It takes no longer for someone with just a little experience to open the lock of an aircraft door. And once opened, it is easier to start an aircraft than it is an auto.

We insurers are painfully aware of just how easy this process is. There is nothing we would more prefer than to see the manufacturers of general aviation aircraft put on lock proof or anti theft systems on every aircraft they manufacture. They have not done so, and we do not understand why. The Federal

[1] Retained in committee files.

Aviation Administration has long been aware of the problem, but has never asked the manufacturers why they will not install anti-theft devices on their aircraft. Again, we do not understand why, with so much money involved, the FAA has not done so. So long as this issue remains uncorrected, however, the stealing of private general aviation aircraft cannot help but escalate.

But where an aircraft is so stolen and then used on a drug run and confiscated by a foreign government, we believe that the foreign government ought to be obliged, once the innocence of the owner is shown, to return that aircraft to the owner.

Embezzled aircraft

The second type of situation where aircraft are used for illegal purposes without any involvement or complicity on the part of the owner is where the owner parks his aircraft with a commercial operator or a fixed base operator (FBO) at a local airport and permits that operator to rent the aircraft on an hourly, daily or weekly basis to customers. It is then rented by a customer who is a pilot with an FAA pilot's license, who specifies an entirely lawful purpose and flight plan for the rental, who otherwise appears above suspicion, but who, once airborne, departs from his stated flight plan and uses the aircraft on a drug run. These kinds of circumstances, colloquially known as "embezzlement," also happen with increasing frequency—and for several reasons.

First, the FAA's pilot certification procedures leave much to be desired. Unlike automobile drivers licenses which must be renewed every two or three years, which are usually plasticized like Government or military I.D. cards, and which also usually have a picture of the driver so as to assure instant and easy identification, FAA pilot licenses have none of the above. They are printed on very light cardboard paper, they have no pictures, and there is no requirement that they be renewed every two or three years. They are so inadequate and so easily forgeable that they are virtually never used for identification purposes. Practically anyone who wishes to rent an aircraft can do so simply by demonstrating the ability to operate the aircraft. Even if he is required to file a flight plan which is usually not the case, it would in any event make no difference because he can easily use an assumed name or a forged permit. Given these conditions, it is safe to say that until the FAA tightens up on the issuance and renewal of pilot licenses, aircraft embezzlement will remain a major problem.

Moreover, the FAA even claims to lack the power to revoke a pilot's license despite the fact that the FAA has grounds to believe the pilot may be a drug smuggler. We recently provided the FAA with clear evidence demonstrating that three individuals—each holders of FAA pilot licenses—were or may have been involved in drug smuggling activities. We asked the FAA to open proceedings asking these three individuals to show cause why, in light of the evidence, their pilot's licenses should not be suspended or revoked. The FAA declined to do so, advising us that they could not take such action unless the individual had in fact been convicted of the crime of drug smuggling.

We think this is an extremely narrow interpretation by the FAA of its powers. But if true, those powers should be legislatively clarified or expanded because otherwise there is not only no way to identify pilots who embezzle aircraft but there is likewise no way, unless they are finally and ultimately convicted, of preventing pilots from continuing to use their licenses over and over again in the drug smuggling trade; and we understand that a pilot can earn as much as $50,000 (obviously tax free) for a successful marijuana run and as much as $100,000 for a successful cocaine run.

THE POSITION OF THE INSURERS: II

Once understanding how easy it is to steal or embezzle an aircraft in this country, it becomes easier to understand why we insurers hold to the position that foreign governments should be required to return confiscated aircraft whenever it can be demonstrated that the owner of the aircraft was innocent because the aircraft was either stolen or embezzled. This position is also consistent with the laws of most of the states of this country, and it is similarly consistent with the federal regulations on the subject as set out in 19 CFR § 171.13.

Furthermore, under our policies of insurance, we virtually always pay an innocent owner on his policy in any case where his aircraft was stolen and then confiscated by a foreign government. As he is innocent, it is only fair that we should pay him on his policy if the foreign government does not return his aircraft. But we believe the foreign government has no right, under generally

accepted principles of both domestic and international law, to confiscate his aircraft when it was stolen or embezzled from him and he was in no way involved in the illegal activities.

Moreover, if our Government were ever to adopt a position under which foreign governments were not to be required to return such aircraft, this Committee should be well aware that the consequences of adopting such a position would be that confiscations by foreign governments of U.S. registered aircraft would escalate significantly—notwithstanding the innocence of owners. And we insurers would end up not just subsidizing but openly paying for the fleets of private aircraft used and operated by foreign government officials. As a matter of fact, such an approach would probably work as an incentive to various foreign officials to seize any U.S. aircraft that they can find within their territory—even if it was in no way involved in any illegal activities. No conceivable purpose is served by such a result. Moreover, such a result would surely lead, as it has in the past, to the payments of large bribes to foreign officials so that "confiscated" aircraft can be "informally" released and then returned to their lawful owners in the United States.

With these objectives and the reasons for them in mind, we can now turn to the proposed treaty—first discussing its history and then turning to the purposes it is intended to serve.

THE 1937 TREATY

In 1937, the U.S. entered into and ratified a treaty with the Mexican Government which required that all autos and aircraft which are "stolen or embezzled in either country and taken into the territory of the other country shall be recovered" by the Government of that other country "and returned to the country of the legitimate owner". As the drug traffic by road and air escalated between the two countries during the 1970's, the provisions of the treaty became of increasing importance. We insurers understood the treaty to mean precisely what it says, namely, that all stolen or embezzled aircraft or autos found in Mexico shall be returned to their lawful owners in the United States and vice versa.

In recent years, however, Mexican authorities have for the most part consistently refused to return U.S. registered aircraft, usually suggesting that the owner was in complicity with the crime and that the aircraft was therefore neither "stolen" nor "embezzled" and hence did not need to be returned. More often than not, the only way such an aircraft could be extracted from Mexico was through the payment of a substantial sum of money to a Mexican official. This kind of payment was often disguised as a fee in return for some services, but it was most commonly viewed as nothing more than a bribe or "mordida". We have reason to believe that, as is so often true beyond our borders, payments of this type are not only not thought of as being improper, but they are in many ways an established and accepted practice.

We underwriters, however, have always been opposed to making such payments. Moreover, starting in the mid-1970's, and especially following adoption by the U.S. Congress of the Foreign Corrupt Practices Act, we began openly to complain to the U.S. State Department about this situation and to insist that the U.S. Government take steps to enforce the terms of the 1937 Treaty. Treaties are binding legal obligations between nations, the insurers argued, and they should accordingly be enforced according to their terms.

THE STATE DEPARTMENT'S RECORD UNDER THE 1937 TREATY

The State Department has been unable to enforce the terms of the 1937 Treaty. We think two examples should serve to illustrate the problems encountered by the State Department in retrieving stolen or embezzled aircraft from the Mexican Government.

The Cessna 402: N–5879M

In November 1978, an unidentified individual rented a Cessna 402, N–5879M, from an FBO and then used the aircraft on a flight to Mexico, presumably for drug smuggling purposes. It was always clear, and no one ever denied, that the owner of the aircraft was entirely innocent and in no way connected with the theft or the drug run. Shortly after its disappearance, the aircraft was located in Mexico. Within a few weeks thereafter, documents concerning the aircraft and substantiating its ownership were submitted by the insurer to the U.S. Embassy in Mexico City for purposes of securing its return under and in accordance with the 1937 treaty. Calendar year 1979 passed with no results—except that the in-

surer learned, first, that the U.S. registry number N–5879M had been illegally laundered out and replaced by a Mexican X number (we shall speak more of this illegal practice later), and second, that the aircraft was being regularly used by Mexican Government officials. Both of these circumstances were brought to the attention of the U.S. Embassy officials in Mexico City during 1979.

In January 1980, we formally discussed this aircraft with State and Justice Department officials, and asked why it had not yet been returned. On March 12, 1980, the Justice Department informed us that the U.S. Embassy in Mexico City had "no file" on the aircraft. The insurer, however, could not believe this, as he recalled earlier correspondence from the Embassy specifically concerning the aircraft. A search made by the insurer of his files confirmed his recollection and disclosed that on December 17, 1979, he had in fact received a letter from the Embassy about the aircraft, suggesting that it would be returned after Christmas. A copy of the Embassy s letter is attached as Exhibit No. 4. By letter dated April 29, 1980, we disclosed Exhibit No. 4 to the State Department and asked how, in the face of such a letter, the Embassy could say it had "no file" on the aircraft. We demanded immediate release and return of the aircraft, identifying its location and noting that it was still in use by Mexican officials. The file was then evidently discovered somewhere within the Embassy and, for the first time, the Embassy seemed effective in obtaining release of an aircraft.

On May 13, 1980, the State Department advised us that the aircraft was ready for pick-up. But the letter attached hereto as Exhibit No. 5 describes the unfortunate circumstances of that pick up. The aircraft was released by the Mexican Government, it seems, only after and because it had been heavily damaged and rendered totally inoperable. Also, when it was returned, its U.S. N number had been illegally laundered out and replace by a Mexican XC number, indicating that it was owned and used officially by the Mexican Government. Later investigation disclosed that, contrary to fundamental and generally accepted principles of international law, Mexico had never advised the FAA of its laundering out of the U.S. registration number, much less of its replacement with the Mexican Government registration number.

On August 19, 1980, at the suggestion of the State Department, we documented a claim for $11,400 against the Mexican Government for repairs to the aircraft, as it was crystal clear that the aircraft was damaged while it was being used unlawfully by Mexican Government officials. We understand that sometime in December 1980, the State Department delivered a diplomatic note to the Mexican Government demanding reparations of $11,400. It has been 18 months since delivery of that note and, so far as we are informed by the State Department, it has yet to receive anything from the Mexican Government in response. We believe the effort to seek reparations should be continued. If Mexican authorities are not to be held, and do not deem themselves, responsible and accountable for their activities under the 1937 Treaty, it does not bode at all well for the likelihood that the proposed treaty will be any more effective.

The Piper Seneca: N–54384

The second example illustrating the State Department's inability to enforce the terms of the 1937 treaty involved a Piper Seneca with U.S. registry number N–54384. This aircraft was confiscated by Mexican authorities in late 1975. For several years there was intermittent litigation in Mexican courts over the aircraft's true ownership. By January 1980, however, that litigation had long since been concluded, and in March 1980, we were advised by the U.S. Embassy and the Justice Department that the aircraft was awaiting release and return. By October 1980, however, Mexico had still not released the aircraft despite what we understood had been multiple representations and requests by the Embassy for its immediate release.

By March 1981, there was still no progress to report—except for further representations by the Embassy to various Mexican authorities. By the end of May 1981, there was still no progress to report—except that certain Mexican officials seemed to be asking for still additional documents, signatures, and notarizations beyond the dozens of such items which the insurers had previously provided. In July 1981, Mexico reportedly adopted new documentary requirements thus further delaying return. There was some suspicion at this time that if mordida were paid the aircraft would have been promptly returned. By their persistent stalling tactics, Mexican Government officials were, in our view, signaling their preference for using non-official channels, rather than the U.S. Embassy and the 1937 treaty, for effecting the return of U.S. aircraft.

By September 1981, the aircraft was still not returned. Finally, during the last week of October 1981, Mexico let it be known that the aircraft would be released. And when it was released, it was inoperable and had to be trucked back to this country. Its engines were of no value, all of its avionic equipment had been vandalized, and its overall condition was such that it had nothing more than a salvage value of approximately $15,000—far less than the costs and expenses my clients incurred in their efforts to secure its release.

THE PROPOSED TREATY

One may ask why, in the face of this history under the reasonably clear terms of the 1937 treaty, our country would ever want to enter a new treaty with Mexico on the same subject. We have asked ourselves that question several times, and we are still not sure of the answer. The State and Justice Departments tell us that this treaty is clear and unambiguous and therefore enforceable, unlike the 1937 Treaty. Our principal purpose in testifying before you today is to make certain that State and Justice prove to be correct. We want to make certain that four potential ambiguities are clarified so that, when and if this treaty enters into effect, all concerned parties and governments will know precisely what they can and are entitled to expect.

Before detailing these four points, we believe it might be useful to relate some of the history of the negotiation process behind the new treaty, as this should help to explain certain of its critically important provisions.

The negotiating history

When the State Department first advised us of its intention to draft a new treaty, it explained its purpose as being that of tightening up the language of the 1937 treaty so as to assure that the Mexican Government would be required to take custody of a U.S. aircraft, promptly report it to the U.S. Government, and equally as promptly return it to its lawful U.S. owners.

When an early draft of the treaty was publicly released, however, it required Mexico to return "stolen" autos and aircraft as well as "embezzled" autos. But it did not require Mexico to return "embezzled" aircraft—thus meaning that the Mexican authorities would be able lawfully to retain aircraft like N–5879M and N–54384, and, indeed, any aircraft that had been rented in a lawful manner and then unlawfully converted by the rental pilot once in flight to a drug run. We viewed this as an open invitation to the Mexican Government to retain most U.S. aircraft seized in Mexico. For all the Mexican Government need do to frustrate its return obligations entirely would be to argue that the aircraft was "embezzled" not "stolen".

Moreover, when questioned how such discrimination could be justified and why the owners of embezzled autos should be preferred over the owners of embezzled aircraft, our Justice Department openly stated that they were in effect willing to sacrifice "embezzled" aircraft if, by doing so, they could recover from Mexico all the "embezzled" autos—which carried a total value, so Justice argued, much in excess of the embezzled aircraft. In short, Justice had decided to prefer Hertz and Avis over aviation interests.

But the aviation insurers (principally USAIG, SEAU, and National) vigorously opposed this approach and insisted on equality of treatment. We argued that the Government had neither the power nor the right to practice such discrimination. We also argued that the Justice Department's approach would work only to the advantage of those Mexican officials who always seemed to be able to confiscate U.S. registered aircraft for their own personal use.

In January 1980, the Executive Branch released a revised draft of the treaty. While recognizing our argument, it did nothing more than amend the draft so as to provide that Mexico would enjoy "discretion" as to whether to return embezzled aircraft and should give "due consideration" to any information suggesting that the owner of such an aircraft "was not in complicity with the felon."

The insurers equally as vigorously opposed this "new" approach, arguing again that it was an open invitation to Mexican officials not to return any such aircraft. We also pointed out that if the object of the new treaty was in fact to tighten up the language of the 1937 Treaty, this type of provision worked a directly contrary result. We did not merely criticize, however, we prepared and submitted to the State and Justice Departments a carefully drafted amended provision that would bring about equality of treatment.

Unlawful laundering-out of U.S. registration numbers

Months then passed, amidst reports that various drafts and redrafts were still under consideration and circulating between the two Governments. Meanwhile, the insurers were presenting evidence to the State and Justice Departments indicating not only that bribery and mordida were continuing to flourish in Mexico and elsewhere, but that there now seemed to be clear and persuasive evidence of an emerging unlawful practice in Mexico of obliterating U.S. "N" numbers, substituting Mexican X numbers, and then either using the aircraft in Mexico or selling it elsewhere in Latin America. The insurers coordinated their work with the FAA and were able to identify several specific instances where certain newly registered Mexican aircraft were in fact U.S. owned aircraft which were still on the U.S. registry.

The insurers also learned that while many X numbered (former N numbered) aircraft were unlawfully entered on the Mexican Government's aircraft registry (thus clearly showing the knowledge if not complicity of Mexican Government officials), other X numbered (former N numbered) aircraft were not entered on the Mexican registry but simply sold to nationals of other countries who would then replace the X number with a presumably lawful registration number of their own country. We even learned of a case where the Mexican air authorities telexed to the FAA's aircraft records division in Oklahoma City an X number for a previously U.S. registered aircraft that had been reported as stolen and its FAA records had been so marked. It was most surprising to us not only that the Mexican authorities would do this but that the FAA would acquiesce—without ever objecting to the Mexicans much less notifying the owner or his insurer. We vigorously complained of these patently unlawful practices to the FAA, the Justice Department, and the State Department. So far as we are informed, there is still no progress toward solving the problem—even though the unlawful practices are continuing if not escalating. In order fully to acquaint the Committee with the situation as it exists today on this subject of the unlawful laundering of N numbers, we are attaching (as Exhibit No. 6 and 7) copies of an exchange of correspondence dated March 25, 1982 and April 5, 1982 with the State Department. So far as we are aware, nothing new has occurred since then.

The Final Negotiations

Let us return, however, to the history of how the Treaty was finally negotiated. Just a few days preceding the election on November 4, 1980, word leaked out to the insurers that, without any advance warning, the U.S. Government was about to agree upon and sign with the Mexicans the objectionable treaty text of January 1980. The insurers immediately launched an eleventh hour effort at the highest State and Justice Department levels to delay signature at least until after the election. The effort was successful, the treaty was not then signed, and the insurers were given a renewed chance to present their position, which they did.

A revised and final draft was ultimately agreed upon and signed by the two Governments on January 15, 1981. While not meeting all of the insurers' objectives, the final Treaty is a major improvement over earlier drafts. But unless the terms of this Treaty are properly clarified and interpreted so as to clear up several serious potential ambiguities, we very much fear, as we said earlier, that this Treaty will be just as ineffective as was its predecessor. It is to those four points to which we now turn.

THE IMPORTANT CLARIFICATION

(1) Easily one of the most important provisions of the Treaty is Article I(4). This is the paragraph which, in its January 1980 version, permitted Mexico to refuse to return embezzled aircraft and to do nothing more than "give due consideration" to evidence that the U.S. owner was innocent of wrongdoing and in no way in complicity with the unlawful activities. As earlier pointed out we vigorously opposed the 1980 version; and in the final text before you now, the paragraph was amended to provide that Mexico could only refuse to return an embezzled vehicle or aircraft "that is subject to forfeiture" under its laws. These added quoted words are critically important, because under Article 40 of the

Mexican Penal Code—which the State Department tells us governs forfeiture under Mexican law—aircraft that belong to third parties can be forfeited, as Article 40 reads in translation, "only when they have been used for unlawful ends with the knowledge of their owner". What this means is that if the owner had no knowledge of the unlawful activities and was otherwise innocent of wrongdoing, his aircraft (whether stolen or embezzled) must be promptly returned. (A translated copy of Article 40 is attached as Exhibit No. 8).

In terms of procedure, moreover, we have been assured by the State Department that Article I(4) means that Mexico must promptly return *every* U.S. registered aircraft which it seizes unless:

(a) Mexico promptly opens an Article 40 judicial proceeding with respect to the aircraft; and

(b) that proceeding (in which, as interested parties, the owner and/or his insurer would be entitled to participate if they so wished) reaches the determination or conclusion that the aircraft's owner was in complicity with the illegal activities or had knowledge of the illegal purposes to which the aircraft would be put.

We certainly agree with these procedures. If an Article 40 proceeding is opened and if it fairly concludes that the owner was in complicity, Mexico should be able to confiscate the aircraft. On the other hand, if the proceeding fairly concludes otherwise, or if an Article 40 proceeding is not promptly opened, then the aircraft must be promptly returned to its U.S. owner.

We feel sure that this Committee shares our firm desire to establish the means by which Article I(4) will be enforced, and we have no doubt that this Committee equally shares our views and the State Department's views about the procedures and meaning of Article 40 as described above.

(2) The second and almost as important point deals with the extent to which we, as insurers, should be permitted to participate in the investigative process of the U.S. authorities. This process occurs when the U.S. authorities are informed by Mexico that a U.S. aircraft has been seized and when they undertake, in accordance with Articles I(4) and III(2)(d), the investigation to determine whether the U.S. owner was involved in the illegal activity that caused the flight and resulted in the seizure. While our participation in this process does not concern Mexico, it is a matter which we deem to be of critical importance and one upon which we have been so far unable to see eye to eye with the Justice Department.

We are persuaded that we should be very deeply involved, in a wholly cooperative way, in the government's investigative process. For not only do we usually know as much if not more about the aircraft and its owner than do the investigating personnel, but if those personnel happen to know more, it is extremely important for us to learn what they know. For example, if they find owner complicity, we should know about this not only so that the insurer can avoid paying off a drug runner, but also so that we can make sure that such individuals do not again enjoy insurance protection from us. On the other hand, if the investigative personnel find that there is no complicity on the part of the owner, this should then *ipso facto* permit us to obtain prompt return of the aircraft from the Mexican officials with custody.

We hope the Committee can appreciate from this just why and how important it is for us to participate in the investigative process. And this leads to the third issue that should be clarified.

(3) Article III(2)(d) of the Treaty requires that the investigating U.S. authorities submit to Mexico an "investigative report" showing either that the aircraft was stolen or "in the case of an embezzled aircraft, describing the circumstances surrounding the rental." It is essential that, as insurer of any such aircraft under investigation, we be furnished with a copy of that investigative report. Yet, the Justice Department continues to advise us that while they can furnish such a report to a foreign government, they are prevented by privacy considerations from furnishing such a report to us. We find this incomprehensible. But to the extent Justice's fears along these lines have any validity, we are sure they can be laid to rest through a firm conclusion by this Committee that, in light of the specific terms of the Treaty and the unique foreign policy considerations involved in this sensitive area of narcotics and smuggling, we insurers should not only be permitted to participate in the investigative process,

but we should also be entitled to receive, formally or informally, a copy of the investigative report which is furnished to the Mexican Government.

(4) Our final critical area of clarification concerns the issue we previously discussed of the extent to which the illicit practice of laundering out U.S. "N" numbers continues to flourish in Mexico and perhaps also elsewhere in Latin America. This Committee should know that to the extent this illicit practice is allowed to continue in Mexico, the proposed Treaty—even if interpreted precisely as recommended above—can still become as meaningless as its predecessor. For if the majority of U.S. aircraft seized in Mexico have their N numbers laundered out before they even become subject to the Treaty, then the Treaty clearly will serve little or no useful purpose. It is precisely for this reason that we have been pressing so hard on Justice, State, and the FAA to make sure that the Mexican Government takes definite steps to discourage this activity in Mexico and that it does not, in any event, allow any previously U.S. registered aircraft to be entered on the Mexican registry unless the FAA is first advised and gives its consent.

To the extent this Committee can assist us in that effort, it would not only be greatly appreciated, but it would help to make the Treaty a worthwhile and effective contribution to international law.

CONCLUSION

It has been an honor to present this testimony before your Committee. To the extent we can be of any additional assistance to you or to your knowledgeable and helpful staff, it would be our pleasure.

EXHIBIT 1

[From the Washington Post, Mar. 12, 1982]

AROUND THE NATION—DRUG CHASE ENDS IN WILD SHOOTOUT AT TENNESSEE AIRPORT

MADISONVILLE, TENN.—A 700-mile aerial drug chase that involved three airplanes and stretched from the tip of Florida to Tennessee ended yesterday with a wild shootout on a runway and the confiscation of $500,000 in marijuana.

The five smugglers escaped after trying to run down pursuing federal agents with a truck on an airstrip.

Customs Service Agent Ramond Perez said a suspicious plane was first picked up on military radar about 75 miles south of Key West. Customs Service agents in Tampa sent a plane to follow it after vain attempts to contact the plane's pilot.

The first chase plane could not keep up, and a second chase plane was sent up from Jacksonville.

The smugglers' plane rolled to a stop about 3:30 a.m. at the Monroe County Airport and the customs plane from Jacksonville landed behind it moments later, crashing into a car that investigators said apparently had been strategically placed on the runway by the smugglers.

Two federal agents, armed with a .30-cal. rifle and a shotgun, leaped out of the crashed aircraft and ran toward the suspects, who were unloading the marijuana into a pickup truck, Perez said.

The men stopped loading the pot, jumped into the truck and drove down the runway, blazing away with guns and trying to run over the customs agents, he said. The agents were not hit, and it was not known if any of the smugglers were wounded.

"We got 41 bales of the wacky-weed," Monroe County Deputy Sheriff Don Sherlin said.

On Wednesday evening, a Customs air patrol turned back a Cessna 404 attempting to land in central Florida and chased it to the Bahamaian island of Bimini where, short of fuel, it was forced to land. Inside the plane, authorities found cocaine with a street value of $130 million.

The two actions followed the largest cocaine bust in history Tuesday when Miami-based Customs and Drug Enforcement Administration agents seized cocaine valued on the street at $950 million from a cargo jet at Miami International Airport.

No arrests have been made in any of the incidents, said a customs spokesman.

EXHIBIT 3

[From the Atlanta Business Chronical, Mar. 17, 1980]

ATLANTA AIRPLANE OWNERS LOSING GROUND TO NARCOTICS SMUGGLERS

(By Robert Ceram)

When Pat Epps rented the twin-engine aircraft to a top corporate executive, he had no idea that several days later the aircraft would crash in Haiti with a load of marijuana aboard.

Epps Air Service at DeKalb-Peachtree Airport in Atlanta is the largest independent fixed base operation in Georgia.

Epps has learned to be wary of renting aircraft to strangers. He checked out the company official who wanted his Cesna 411 and found he was a legitimate, prominent, well-known executive. So Epps rented him the aircraft for a weekend at St. Simons Island. A few days later the executive reported the aircraft had been stolen. Epps was notified it had crashed in Haiti with dope aboard.

The executive later was brought to trial. But it was expensive for Epps. He lost $20,000 not covered by insurance, the expenses of sending a representative to Haiti, the time and expense of attending the trial, not to mention the intangible damage to his insurance coverage.

Since then Epps has had a long-time customer run away with a Piper Lance, a $75,000 single-engine aircraft. It was seized in Colombia, South America, while on a smuggling trip. Another Piper Lance ran off a runway into a lake near Sebring, Fla. It, too, had dope aboard.

Epps, like many other fixed base operators, has been forced to take extraordinary security precautions to prevent rental aircraft from winding up a vehicle for smuggling dope. Fixed base operators are located at airports throughout the country providing services such as fueling and maintenance to private aircraft owners. In many instances, they also rent or lease planes.

Epps now runs lengthy background checks on new renters, finding out where they work, how long they've been there and what their reputation is.

He is suspicious of people who live in apartments, who are vague about their destination or who flash large amounts of cash. "I'm wary of anyone who wants to go to Florida," he says. "I don't know if my airplane will be coming back." And he will not rent an aircraft to go to the Bahamas unless a company pilot is aboard.

The theft of general aviation aircraft for use in smuggling has reached such proportions in Atlanta and throughout Georgia and Florida that fixed base operators, insurance companies and lending institutions are changing policy in reaction to drug smugglers.

Carrol Davis of The Fulton National Bank of Atlanta is president of the nationwide Aircraft Finance Assn. His bank is a major bank in the Southeast for aircraft financing. Davis says the theft of aircraft for use in drug smuggling "is the major problem facing general aviation today."

Tom O'Neal with Hangar One, a fixed base operator with operations in Atlanta and nine other Southeastern locations, says, "If a man walks in off the street and wants to rent an aircraft, we are suspicious." Except for longtime corporate customers, Hangar One now rents only small single-engine aircraft of a type not desired by smugglers. And at some Hangar One locations, plastic-covered tempered steel chains are locked around propellers to prevent aircraft from being stolen.

"We're thinking of going to a 24-hour waiting period before we rent aircraft, while we check out new customers," O'Neal says.

Deannes Rowedder, vice president of claims for Southeastern Aviation Underwriters in Atlanta, says in 1978–79 his company had 32 aircraft stolen or converted to illegal use—more than $4 million in claims.

"We are still losing aircraft through theft and conversion" and lately many of these are "high value aircraft," Rowedder says. A $1 million-plus King Air recently was stolen and later confiscated in Colombia. As MU–2, a twin engine turboprop, was confiscated in the Dominican Republic with dope aboard.

"This is a serious problem to me," Rowedder says.

Private or corporate owners who can prove theft of their aircraft have little trouble collecting from insurance companies. But fixed base operators have problems when rental aircraft are used in smuggling. A renter has lawful possession of the aircraft. If he converts the aircraft to illegal purposes and the air-

craft is seized, there is, as Rowedder puts it, "a definite question of coverage." Oftentimes the fixed base operator says "theft" while the insurance company says "conversion."

It is at this point that bankers such as Davis become concerned. Aircraft usually are financed at 80 percent. If a $1 million King Air is stolen, the bank suddenly has an $800,00 loan and the collateral has flown the coop.

"We feel insecure in our loans," Davis says.

Aircraft are notoriously easy to steal. Being made of aluminum and lightweight materials, locks are simple and easy to either pick or rip out. A person with a key for a given model of aircraft—even big corporate twins—will find the key opens the door to perhaps 90 percent of all other aircraft of that same make and model.

Insurance companies, banks and fixed base operators long have leaned on manufacturers to improve aircraft security systems. They have made no progress.

The number of U.S.-owned aircraft confiscated in foreign countries because of smuggling activity is in the hundreds.

Guy Hill, owner of Hill Aviation at Fulton County Airport Brown Field in Atlanta, had a Cherokee Six seized in Mexico. It took Georgia Sen. Sam Nunn, Gov. George Busbee and two Mexican lawyers to have the aircraft released. And even then airport officials would not allow Hill to have his aircraft. So, when no one was looking, he jumped in the aircraft and flew it away. He later had a Cessna 310 rented by a long-time customer converted to use in smuggling and seized in south Georgia. "That put me out of the aircraft rental business," Hill says.

Hill found when he was in Mexico, that more than 400 U.S. aircraft were in impoundment there—mostly for drug running. Aircraft today are impounded in Cuba, Jamaica, Haiti, The Dominican Republic, Venezuela, the Netherlands, Antilles and Colombia. Almost 100 aircraft are impounded in Colombia alone. And probably an equal number have been burned and buried alongside remote clandestine air strips after having mechanical problems.

The western edge of Andros Islands in the Bahamas, Williams Island and Bimini—all hotbeds of transshipment activity—are littered with hulks of crashed aircraft.

U.S. Customs in Miami has dozens of aircraft in impoundment.

The aircraft confiscated, impounded or crashed range from smugglers favorites such as the single-engine Cessna 210 and Piper Lance up through twin-engine corporate aircraft and even jets. A Learjet is among the aircraft confiscated in Colombia.

The price for new twin-engine aircraft range from about $100,000 to more than $1 million. Many of the twins being sold—then stolen or converted—are cabin-class twins costing around $500,000.

Deregulation has played a role in this. The flip side of deregulation is that airlines are exercising the privilege to move out of smaller markets. This has caused an overnight explosion of commuter airlines and the charter business. And commuter airlines and fixed base operators building up the charter fleet are buying cabin-class twins—the aircraft favored by narcotics smugglers contemplating long over-water haul to Colombia.

Small companies who buy a twin-engine aircraft to call on markets not served by airlines find the theft of such an investment a crippling blow. Chartering another aircraft to fill the gap can—in six months—cost maybe half the price of the stolen aircraft. Bank payments and insurance must continue on the stolen aircraft. The theft of the aircraft can mean the difference between solvency or insolvency for a small company with a new aircraft.

The devious nature of smugglers who hoodwink legitimate businessmen out of expensive aircraft can be illustrated by a recent event. A Beechcraft dealer in Greer, S.C., received a call from Boca Raton, Fla. The caller wanted a demonstration flight in a new King Air. He said he was extremely busy and that, in order to save time, the aircraft should be refueled and made ready for an immediate departure as soon as it arrived in Boca Raton. The caller sent a $10,000 deposit. The aircraft arrived, was refueled and made ready.

While the pilot was away, someone stole the aircraft. It was confiscated in Jamaica. Dope was on board.

An Atlanta fixed base operator rented a Beechcraft Baron, a $150,000 light twin, to several businessmen. The aircraft was confiscated at an abandoned airport in Venezuela not far from Colombia's infamous Guajira Peninsula—de-

barkation point for most marijuana, cocaine and Quaaludes coming out of South America. The aircraft was flown almost 200 hours by the Venezuelan military before the Atlanta fixed base operator regained control. It cost the fixed base operator $20,000 in legal fees and repairs.

Once an aircraft is confiscated in a foreign country, it is extremely difficult to have it released. Oftentimes the aircraft is repaired and pressed into service with the military of the foreign country.

Insurance companies basically won't make payments on aircraft converted to illegal use. But they often pay rather than go to court. Historically, courts rule in favor of the insured if there is the slightest doubt. Courts take the position that insurance companies write policies, know the risks and contend that if there is a loss it should be paid.

Insurance companies are afraid if they protest too much, the exclusion clause may be thrown out entirely as against the public interest. So while it is there and often referred to by insurance executives, they pay off more often than they would like for people to know.

No one wants to talk about it, but there are soldier-of-fortune-type pilots who hire out—in a discreet fashion—to fixed base operators, insurance companies and lending institutions. These men go into foreign countries and "recover" confiscated aircraft.

Insurance companies that would like to crack down on the theft of aircraft by strengthening their contracts are in a bind. Only about 10 companies write an appreciable amount of business in the highly specialized field of aviation underwriting. If one company tightened its confiscation exclusions and others did not. that company probably would find lending institutions would not allow borrowers to insure their aircraft with the company. Banks want to be able to collect from insurance companies as quickly and as effortlessly as possible in the event of a loss.

"It doesn't take many half-million dollar loses to make a bank tighten up," Davis says.

Fixed base operators whose renters convert aircraft to illegal purposes are caught in the middle. They run the risk of insurance companies not paying off; the risk of losing their insurance; and oftentimes the burden of recovering the aircraft.

Fixed base operators are reacting to the danger of theft and conversion just as banks and insurance companies want them to—by either getting out of the rental business or by adopting extremely rigid standards regarding rentals.

Aircraft financing is as specialized an area as is aircraft insurance. Small banks who finance an aircraft as a favor for a good customer often get burned. They are not savvy enough to know that the aircraft is not safe just because payments are made on time. Davis says aircraft owners sometimes will not let the bank know the aircraft has been confiscated. They continue making payments and keep up the insurance, hoping to recover the aircraft themselves. But even if the owner does recover the aircraft, banks often demand full payment immediately.

"If it went to South America once, it could go again," Davis says.

Davis is rewriting his aircraft finance forms. On the new documents, the lender must agree to two additional clauses: (1) not to remove the aircraft from the 48 contiguous states without written approval, and (2) not to remove the aircraft from its home base for more than 30 days without written approval.

This is as close as a bank can come to legally telling a lender not to take his aircraft to South America. It also is designed to prevent lenders from hiding the fact that aircraft has been confiscated.

The effect the theft of aircraft for drug smuggling is having on financing is causing great concern among aviation executives. Financing is the very heartbeat of industry expansion. But now—solely because of smuggling—banks are tightening up. At a time when the market for twin-engine aircraft is at its peak, banks are being forced to scrutinize very closely anyone buying the expensive twins.

Most ominous of all is the fact Davis and his bank no longer will floor plan (provide interim financing) aircraft for new fixed base operators south of Orlando, Fla., even though, "We get frequent calls from down there." Most of Florida has been, in effect, "redlined" from adding new fixed base operators. And banks are growing close to the federal Drug Enforcement Administration as they seek to determine if loan applicants are known to the agency. Banks also are

becoming more particular about financing leasebacks and are taking a very close look at operators who lease bank-financed aircraft.

The Aircraft Finance Assn. headed by Davis will devote its entire board meeting in May to problems that have arisen in the industry because of smuggled aircraft being confiscated in foreign countries.

"The magnitude of this is great," David says. "It is seriously affecting the aircraft business and in the future will affect it even more."

This brings up the question of what corporate executives can do to make sure aircraft are not stolen or converted to use by smugglers.

Last November when the association obtained a list of the identifying numbers of U.S.-owned aircraft confiscated in Colombia, a trace was run on each number. Then the association attorney began contacting owners. Davis says it was amazing how many corporations and banks did not know their aircraft had been confiscated. In some instances the aircraft had been temporarily leased to a second party and sometimes even to a third party. Pilots, all trusted employees, often simply "borrowed" the aircraft and took it to Colombia. That is, at bottom, perhaps the greatest problem for corporate aircraft owners.

No "profile" of a probable smuggler can be developed. A pilot can earn $50,000 for a trip to Colombia taking less than 18 hours. If the load of dope belongs to him, he can retire after one trip. An Aztec, a light twin, recently was seized in the Florida Keys with $5.5 million worth of Quaaludes aboard. Several million dollars worth of cocaine was jettisoned during a hot pursuit by U.S. Customs.

The money to be made in smuggling truly boggles the mind. People who ordinarily might never think of breaking the law are convinced the odds are worth trying it once. At bottom, the theft and conversion of aircraft for use in smuggling is a moral problem. And nothing the fixed base operators, insurance companies or banks can do will solve it.

EXHIBIT 4

EMBASSY OF THE UNITED STATES OF AMERICA,
OFFICE OF CITIZENS CONSULAR SERVICES,
Mexico City, Mexico, December 17, 1979.

Capt. EDWARD IGLESIAS,
Ed Iglesias & Assoc., Inc.,
San Clemente, Calif.

DEAR CAPTAIN IGLESIAS: Thank you for your letter of November 28 concerning aircraft N-5879M; I can well understand your puzzlement at the fact that despite various assurances that the aircraft was soon to be returned, it still remains in the hands of the Mexican authorities.

In fact, we were at one time confident that the release was imminent, and informed you accordingly. What then happened was something not unusual here: local authorities who had thought they could handle a matter expeditiously themselves then decided at the last moment that they had better not act without authorization from Mexico City.

Fortunately, the case appears to be progressing satisfactorily here and will probably be resolved in January; it seems that it is only the fact that the Mexican government is about to shut down for Christmas which prevents an earlier return of the aircraft.

Hoping that this has been of use to you, I remain,

Yours sincerely,

THOMAS H. OCHILTREE,
Vice Consul.

EXHIBIT 5

WARD & MENDELSOHN, P.C.,
Washington, D.C., May 16, 1980.

FRANCES A. ARMSTRONG, Esq.,
Office of Legal Advisor, Inter-American Affairs, Department of State, Washington, D.C.

DEAR FAYE: Thank you for your message of May 13 to the effect that the Cessna 402 with Registration Number N5879M was returned, as you indicated, on April 23 of this year. I suspect your message was intended to suggest to me that this return demonstrates the effectiveness of our Embassy in retrieving stolen or confiscated aircraft from the Mexican Government. In fact, however,

I think the full details of the return of this aircraft ought to be known and understood by everybody, because they may well tend to suggest precisely the contrary.

The aircraft, as you know from earlier correspondence, was confiscated by the Mexican authorities sometime during November 1978. From that time forward, we learned that the aircraft was being operated regularly by various Mexican Government authorities, though we were never able to identify precisely which authorities. It may interest you to know, moreover, that when the aircraft was returned, it actually had painted on it a Mexican registration number—which was XC–HCK. We think we are correct in concluding that an XC number in a Mexican aircraft registration means that the aircraft is registered under the name of, and is being used by, the Mexican Government. In other words, this is an absolutely pristine example of a change by Mexican authorities of an N number of a privately owned U.S. registered aircraft. We have no reason to believe, moreover, that this change was accomplished with the concurrence of the Federal Aviation Agency or in any other manner consistent with the most basic principles of international law. And given these circumstances, we are taking the liberty of bringing this matter to the attention of the Federal Aviation Agency, because here can be no better example of how the Mexican Government, contrary to its obligations under the Chicago Convention and the Mortgage Convention, changes N numbers—and this despite the fact as you informed us, that their officials may tell you face-to-face that such an illegal act simply does not occur in Mexico. Perhaps it may be worth your while to confront these officials with this evidence.

Coming back to the aircraft, however, it is most significant that, after using it for almost 18 months, the only reason the Mexican Government decided it should be returned was because, sometime prior to April 7, the aircraft was heavily damaged and rendered totally inoperable. We were advised on April 7, that the aircraft had been "recently damaged", that it was inoperable, and that it was available for return. Even then, however, they did not produce the aircraft for return until May 7; and when return was effected, we were unable to operate the aircraft at all, much less fly it out. According to our most conservative estimates, moreover, it will require a minimum of $10,000 of repair.

I think you will agree with me, Faye, that if the return of this aircraft is any demonstration either of Mexican goodwill under the treaty or the effectiveness of the U.S. Embassy in obtaining the return of these aircraft, it is certainly a most unique, indeed telling, demonstration. Given this latest incident, moreover, I am even more persuaded that you should be raising this problem to a much higher level within the State Department. I also trust that you will advise me when, and with whom, we shall be having a meeting which might help to bring about a more seemly and appropriate approach to resolving this problem. Certainly when Mexican authorities not only wrongfully use, but then wreck U.S. registered aircraft—all the while operating them under forged Mexican registration numbers obliterating the legal U.S. N numbers—not even the most humble and softspoken of our diplomats can suggest that such conduct complies with the existing treaty between our two countries, let alone the most fundamental and accepted rules of international law. And if my tone is becoming somewhat more concerned than earlier, it is only because we have seen almost no progress at all in the six months we have worked with you—which necessarily means that bribery and mordida may well be the only solutions. But you may be sure that, for our part, we will continue to try to raise this problem to the highest levels within our Government before resorting to the mordida solution. We await your response.

Sincerely yours,

ALLAN I. MENDELSOHN.

EXHIBIT 6

DEPARTMENT OF STATE,
Washington, D.C., March 25, 1982.

ALLAN I. MENDELSOHN,
Washington, D.C.

DEAR MR. MENDELSOHN: Ambassador Asencio has requested that I respond to your letter of January 8 concerning the Department's efforts to assist interested parties in the United States seeking the recovery of aircraft seized abroad.

As indicated in the Ambassador's letter of December 22, 1981, our Embassy in Mexico has been actively pursuing a number of the questions you raised with appropriate Mexican authorities. Those questions include the alteration of aircraft identification symbols by Mexican authorities and a request for informa-

tion about procedures or programs, if any, by which Southeastern Aviation Underwriters or others might seek compensation for the damage done to aircraft while in Mexican custody. In March of 1981, the Embassy reported that discussions with the Deputy Director of North American Affairs in the Secretariat of External Relations (SRE) precipitated communications to the Secretariat of Communications (in which the Direccion General de Aviacion Civil is located), the Secretariat of Treasury (in which the Registro Federal de Vehiculos is located), and the Attorney General's office seeking the information requested in our note of December 18, 1980. The Embassy contacted the Deputy Director again in June of 1981 regarding the lack of a response to our note and was informed that the Mexican agencies involved had not responded to the SRE's written inquiries. The Deputy Director assured the Embassy that a follow-up request would be sent. The Embassy pursued the matter further on September 21, 1981, in a meeting with the Legal Adviser of the Secretariat of Foreign Relations. The Embassy again expressed the Department's concern over the lack of a response to our note and specifically raised the questions relating to the alteration of aircraft identification symbols and to the procedures for claiming compensation for damage done to aircraft while in Mexican custody. The Legal Adviser stated that he would look into the matter and inform the Embassy of his findings. Although, the Embassy has continued to raise these issues with the Mexican authorities and believes, in light of Mexico's cooperation in the negotiation of the new treaty on the recovery of stolen vehicles, that a response will be forthcoming, none has been received to date.

The Department shares the view that the use of aircraft, subject to requests for return, by Mexican officials has been an all too frequent and unpleasant experience under the 1936 bilateral Convention. As you already know, there is no provision against such use under the Convention, and our Embassy has no enforcement power over Mexican authorities who balk at the treaty process, notwithstanding our best efforts. Implementation of the 1936 Convention depends on official cooperation and this was one of the primary reasons for our efforts to renegotiate that agreement.

The proposed treaty specifically prohibits the use of an aircraft or vehicle which may become or is the object of a request for return. In addition, it would eliminate time consuming authentication of documents necessary to the recovery process by consular personnel and would allow the Embassy to assist by dealing directly with the particular Mexican agency having custody of the aircraft. We firmly believe that such steps will improve the prospects for the return of aircraft.

The Department has recently received formal confirmation that the Mexican Senate has approved the new treaty and is prepared to ratify it. The U.S. Senate has not yet advised on and consented to ratification of the treaty. We believe Mexico's willingness to implement the new treaty represents an important step forward in protecting the interests of U.S. citizens whose property is stolen or embezzled and taken to Mexico.

Sincerely,

ROBERT B. LANE,
Deputy Assistant Secretary
for Overseas Citizens Services.

EXHIBIT 7

WARD & MENDELSOHN, P.C.,
Washington, D.C., April 5, 1982.

Mr. ROBERT B. LANE,
Deputy Assistant Secretary for Overseas Citizens Services, Department of State, Washington, D.C.

DEAR MR. LANE: I am in receipt of your letter of March 25, 1982, regarding the subject of Mexico and stolen U.S. registered aircraft.

By letter of August 19, 1980 to your Department, we fully documented SEAU's claim of $11,400 for damages sustained by SEAU's insured aircraft N-5879-M as a direct consequence of Mexico's unlawful use of that aircraft while it was in Mexico's possession. It is now almost two years since we submitted that documentation to the Department. Your letter indicates that throughout this period Mexico has been able successfully to avoid responding in any way to your requests for a reply let alone to our requests that we promptly be paid $11,400 in damages by the Mexican Government. As a former State Department official myself, I find it intolerable both that Mexico has not responded and that the State Department

has permitted itself and our Government to be ignored in so calculated a fashion. We believe it is now time, by way of a high level formal diplomatic note, for our Government to demand a response. Mexico's conduct throughout this episode, we submit, is a very telling example of how they will conduct themselves similarly under the newly proposed treaty—unless, of course, the United States Government takes definite and prompt steps now to demonstrate that it will not tolerate such conduct.

. . . In a series of letters over the past two years, our clients informed you of Mexico's practice of illicitly laundering out U.S. "N" numbers on U.S. registered aircraft and replacing them with Mexican "X" numbers. We even provided you with a precise list of several "X" numbered aircraft which were previously U.S. registered "N" numbered aircraft and whose "N" numbers were illicitly changed by Mexican authorities. Indeed, the aircraft referred to in the previous paragraph, namely, N–5879–M, is a graphic example of a U.S. registered aircraft whose numbers were unlawfully laundered out and replaced by Mexican Government "X" numbers. Everyone concedes that such conduct by Mexico is a clear violation of the Chicago Convention and the well established principle of international air law that an aircraft can have only one valid national registration. Yet, it is again almost two years since we brought this to the Department's attention, and your letter again suggests that you have not even been able to get a response from Mexico about this critically serious matter, much less an authoritative list of the now "X" numbered aircraft which should still continue to be under U.S. registry. We suggest it is now time to obtain such a response—failing which we believe our Government should seek appropriate sanctions against Mexico in the International Civil Aviation Organization. If Mexico is able to continue this clearly illegal practice of freely and regularly laundering out U.S. "N" numbers, it will mean that the terms of the new treaty, even though superficially more definite, will be rendered in practice even less effective than the terms of the treaty you now wish to replace.

Finally, the Department promised that it would provide us with a Memorandum confirming that, under the terms of the new treaty, Mexico cannot confiscate any U.S. registered aircraft unless and until it first opens and conducts a formal proceeding under Article 40 of the Mexican Penal Code—which Article permits confiscation or forfeiture of aircraft only when there is clear and convincing proof that they were "used for unlawful ends with the knowledge of their owner". We are still awaiting that Memorandum, which we suggest also be forwarded to the Senate Foreign Relations Committee for incorporation into the legislative history of the proposed treaty.

We would appreciate your clarification of the above three points. Only with such clarification can our clients reach a thoughtful and intelligent conclusion as to whether the proposed treaty should be ratified. We hope you will provide us with this clarification most promptly.

Respectfully,

ALLAN I. MENDELSOHN.

EXHIBIT 8

ARTICLE 40 OF THE MEXICAN PENAL CODE

Instruments of the crime and any other thing with which it is committed or intended to be committed, as well as the objects of the crime, shall be forfeited if their use is prohibited. Objects of lawful use referred to in this article shall be forfeited by the accused only when he has been convicted of an intentional crime. If they belong to third parties, they shall be forfeited only when they have been used for unlawful ends with the knowledge of their owner.

The CHAIRMAN. Thank you very much. Very good.

Gentlemen, let's take a look first at some of the possible drawbacks of the now existing 1936 convention between the United States and Mexico.

Does the proposed convention, in your judgment, substantially correct these deficiencies?

Mr. GILLILAND. To a major extent. One of the major problems was that the filing had to be with the Embassy in Mexico City. The new treaty permits the filings and the negotiations to be made directly

with the state where the vehicle actually is held. That will help to some extent.

There also is a reduction in the amount of superfluous documentation that was interpreted and required under the current convention.

Both of those areas certainly would show some improvement. I think the most important part of the new convention, if it is adhered to properly, is the required reporting of stolen vehicles that are in the Republic of Mexico to some type of central source and, subsequently, to our Embassy. This notification does not exist under the current treaty.

The CHAIRMAN. Mr. Killingsworth, what factors contribute to the fast-growing market in Mexico and Central America for the sale of stolen U.S.-owned vehicles and aircraft? Is the same true of off-road and agricultural vehicles, items on which I questioned our previous witnesses? Is this a problem the Federal Government should be doing more to combat—that is, off-road and agricultural vehicles?

Mr. KILLINGSWORTH. Well, they all go together.

First of all, there is the need there for these kinds of vehicles, in an economy that is much poorer than ours. There is also the fact that the vehicles are worth roughly twice what they are worth in the United States. There is also the ease with which the thefts can be committed and the ease with which the vehicles can be assimilated into the country.

So, I guess in order to be realistic, we are going to have this problem and many others like it until the day comes when Mexico and the United States are more or less on a par. We have a very rich country next to a very poor country.

Let me give you an example of what I mean. In the city of San Diego, a policeman probably makes $2,000 a month. Right across the border, in the city of Tijuana, roughly of the same size, a policeman probably makes $400 a month. Can he live on $400 a month? No. There is 40 percent unemployment in Mexico.

So, those are some of the reasons why we have this and other similar problems.

The CHAIRMAN. Senator Hayakawa, I would like to thank you for attending our meeting this morning. I already have explained that you were in an Agriculture Committee markup which is important to California, but this also is important. So I said that you would try to get here and we are delighted to see you.

Senator HAYAKAWA. I am terribly sorry to have missed so much of this.

The CHAIRMAN. Do you have to return to that markup?

Senator HAYAKAWA. I hope not.

The CHAIRMAN. Oh, fine.

I have a few more questions, and then I would turn the proceedings over to you and you can wind them up, if you would.

Senator HAYAKAWA. Surely.

The CHAIRMAN. Thank you.

The administration witnesses this morning mentioned that it was also reported that in some cases vehicles and aircraft were returned only after Mexican officials were paid to eliminate delays under the convention. To your knowledge, did such incidents occur? Were they

widespread or isolated? Is this likely to be a continuing problem under the new convention or does the new convention somehow handle that problem?

Mr. KILLINGSWORTH. Well, it could continue to be a problem. I think that particular problem has been more prevalent in the past than it is today, that is, with respect to the activities in which my department is involved.

The recovery of vehicles from Mexico is done largely on a personal basis today. It is not done so much because of the treaty or because of any established rules, but because of good working relationships that are established between officers at the working level. They want to cooperate with each other and they want to help each other.

To the extent that this prevails, there is less of the payoffs or reimbursements for expenses. On the other hand, sometimes there are real expenses for storage or towing where reimbursement has to be made. My department does not pay anybody anything. Insurance companies at times do have to resort to that, however.

The CHAIRMAN. Mr. Mendelsohn, perhaps you would care to comment on this, or any member of the panel may comment. It has been mentioned that a major reason for negotiating the new convention was to speed up the process of returning vehicles and aircraft to their rightful owners. Were there factors other than redtape that impeded quick returns by the Mexican Government?

Mr. MENDELSOHN. Mr. Chairman, I would like to comment on that and also would like to address myself, if I might, very briefly to the previous point you made.

There has been a practice in Mexico and elsewhere throughout Latin America of paying these fees—they are often called mordida—to extract aircraft. I can tell you that my clients have tried to avoid these kinds of payments and they have done so, for the most part, successfully—which may explain why they haven't been able to get as many aircraft out.

These so-called fees range very high. The reason why they are so common in the aircraft industry is because the aircraft themselves often are worth between $300,000 and $500,000, sometimes up to $1 million. If such a valuable aircraft is in use by a foreign army general or a customs official, he rather likes to use it. It is one of the best and most sophisticated examples of American technology. It becomes a very costly effort therefore for us to get it out.

To the extent that the Mexicans change the U.S. registration numbers, the treaty will not at all help to get that aircraft out because we may not even know that it is our aircraft or that the Mexicans have it. But, if the State Department, the FAA, and the Justice Department can be helpful in eliminating that problem, then the treaty will provide a major service for us because of the presence in that treaty of an understanding—of which the State Department and Justice Department are aware, that requires the prompt return of any U.S. aircraft unless Mexico opens up an article 40 proceeding to determine whether or not the owner of the aircraft was in complicity with a drug runner.

Now, if that article works, then it is fair to say that the treaty will work. But whether or not that article—provided for in article I(4) of the Convention—works again depends upon the good faith of our own Government in seeing to it that it is enforced.

The CHAIRMAN. Thank you.

My final question to you, Mr. Gilliland, and perhaps Mr. Evans could expand on it, is this. This is the second time that you have testified before the Senate on the subject of vehicle theft. We all recall, I think, your prior testimony 2½ years ago before the Subcommittee on Investigations. I understand that the National Automobile Theft Bureau Headquarters now are located in Palos Hills, Ill., just outside of Chicago, and we certainly welcome you to Illinois. There is so much migration out of Illinois, that we are delighted to have you there now.

I wonder if you or Mr. Evans would care to add anything to the critique of the Motor Vehicle Theft Law Enforcement Act and how it would help to reduce the number of vehicles stolen as well as their export outside the United States.

Mr. GILLILAND. I think the most important point of the Motor Vehicle Theft Law Enforcement Act, is the fact that there would be a required inspection and a production of some type of documentation as it relates to motor vehicles as defined in the act, which, incidentally, would include agricultural and off-road equipment as well as motorcycles and trailers.

Currently, export either across the Mexican border or by sea has very little control. As you are aware from previous testimony, export declaration is required to be filed with customs not any sooner than 72 hours after the ship has sailed. So there is no product there with which to compare ownership papers with or title documentation prior to the time it is placed in the process of export.

The act would require an inspection prior to the time of it being assigned to the export carrier. I think that, along with significant penalties for violation of the act, would be the most important parts that would apply to this particular situation.

The CHAIRMAN. Fine.

Mr. Evans, did you wish to add anything to that?

Mr. EVANS. Thank you, Mr. Chairman.

With regard to what already has been said, I would simply say that I agree with all that I have heard here at the table thus far.

I would like to say that it is my responsibility in our office in Dallas to file all of the treaty documents that are filed on vehicles that come to our attention in Mexico. At the present time, since January 1, I have filed about 70 cases that are pending. They either have been filed or are in the process of being filed at this time.

We add about six to eight treaty filings per week at the present rate. We are receiving excellent cooperation from Mr. Lane's office, the Citizens Consular Service Office in Mexico City at the Embassy, and we have an ongoing relationship almost daily with his office. In the past several months, we have seen quite an increase in activity from Mexico. The Mexican authorities are reporting in Mexico City from the Federal Registry Department in the Attorney General's Office a number of vehicles. They come in the form of lists or letters or diplomatic notes to Mr. Lane's office, and he forwards them on to us. We do what we can to make sure that any of those vehicles, if they are reported stolen, that we provide the information back immediately.

I would say this, however. I notice on the list of material that we get from the Mexican Government that there are a lot of problems

with numbers that are provided. They are inadequate, many times incomplete, numbers so that we don't know what vehicles they are attempting to describe.

I also know for a fact that we are not getting any information on vehicles where the public VIN number has been removed. It is important to note that in Mexico the VIN number is not used at all. Their registration method is totally foreign to what we are accustomed to here. They have what they call an expedient number, which is a quick reference file, and that becomes the number of the vehicle issued. The vehicles that are manufactured and assembled in Mexico have no serial numbers.

So, I would say we would certainly enhance our position if we would ratify this treaty. I think we can look forward to greater activity.

Typically, our Department gets information on something like 1,000 vehicles a year which we know are there and are located. Of that thousand, we get back probably 600 to 700 vehicles. Of the 600 to 700 vehicles that we get back, only about 13 percent are full, formal treaty filings.

I would encourage that we continue to take advantage of all the releases that are made available to us because, if they are released by the Federal authorities, it is a legal release and it is not illegal. I think we should take advantage of all of those.

The CHAIRMAN. Thank you very much.

From my standpoint, I would like to thank you all for your appearance here today.

I will now turn the meeting over to Senator Hayakawa, who can adjourn it when he completes his own questions.

We both very much appreciate your being here today. You have been of immense help and we will try to speed this convention through the Senate.

Thank you. Senator Hayakawa.

Senator HAYAKAWA [presiding]. Thank you, Mr. Chairman.

Gentlemen, I am very sorry that I have not been here since the beginning of our meeting. But the way things operate around here, when you are lucky you have to be only in two places at the same time. Usually it is three or four.

It is inevitable that we miss something, as I am missing something over in the Agriculture Committee right now.

I am sorry, Mr. Killingsworth, not to have heard your testimony. I am being introduced to this problem of auto theft in the United States, with cars going to Mexico and being sold. Would you give me a very brief summary of the nature of the problem, its size, and its causes?

I have heard that there are different systems of registration and identification, and so on.

Mr. KILLINGSWORTH. Yes.

The size of the problem is estimated to be between 10,000 and 20,000 vehicles per year, going into Mexico.

If we were able to recover the same percentage of stolen vehicles from Mexico as we do stolen vehicles from the United States, it would not be so bad. But, we probably recover only between 5 and 10 percent.

It is very easy to drive a stolen vehicle into Mexico and very easy to dispose of it. It is very unlikely that you will be caught and punished, and unlikely that the vehicle will be recovered.

Cars in Mexico are worth more than twice what they are in the United States. So, you can see that, if you are a criminal looking to make a profit, what better way to do it is there than that?

Senator HAYAKAWA. It is a very attractive idea, I see.

What are the barriers to a quick recovery of these stolen vehicles? I have heard mention of different registration systems, so that there is difficulty in identifying the cars.

Mr. KILLINGSWORTH. The biggest barrier to the recovery of the vehicles is that we never know they are there. They are never identified. Nobody from this side ever sees them or knows they are there. That, by far, is the biggest problem.

Senator HAYAKAWA. When the purchaser of a stolen American vehicle gets it, he has to go somewhere to get a Mexican license, doesn't he?

Mr. KILLINGSWORTH. According to Mexican law, if the vehicle is in the country more than a certain period of time—I think it is 90 days—it is "lien sold," and it starts all over. It doesn't matter whether it is stolen or not it starts over, fresh. It legally belongs to the purchaser and is registered in Mexico.

Senator HAYAKAWA. So, the purchaser can simply hang on to it for 90 days and register it in his own name?

Mr. KILLINGSWORTH. After it is lien sold, yes. There are a number of ways they are disposed of. That is one way. Another way is to use phony plates or no plates at all and they never registered the vehicle. They can also use phony documents. There are all kinds of ways.

Senator HAYAKAWA. What previous agreements are there between the United States and Mexico dealing with this problem?

Mr. KILLINGSWORTH. There is the Treaty of Hidalgo, which was passed in 1936, which requires as much redtape as you can imagine to get the vehicle back. It does not work very well. But there are informal agreements that do work well.

Senator HAYAKAWA. Senator Percy has introduced a new piece of legislation to deal with this problem, then?

Mr. KILLINGSWORTH. This is a new treaty, which both countries have initialed. I believe Mexico has approved it. Now it is up to the United States also to ratify it. Then the treaty will be in effect. It makes the recovery of those vehicles which are located in Mexico much easier. Even better than that, it requires each country to notify the other of any vehicle that comes into its custody, whether stolen or not. It requires notification within 30 days.

So, at least according to the way it is supposed to work, we would receive a notice of every American vehicle that was stored or impounded in Mexico. We would go over that list, see which ones are stolen, and put the process in to play and get it back.

Senator HAYAKAWA. That is what this new treaty would do when ratified by both sides.

Mr. KILLINGSWORTH. That's right.

Senator HAYAKAWA. It has been found acceptable to Mexico already, I believe. They have initialed it and said it was OK. So, it is now up to us, is that right?

Mr. KILLINGSWORTH. Both sides have initialed it, I think in January 1981.

Now it is just the formal ratification by the Senate that stands in the way of making it a fact.

Senator HAYAKAWA. Then there is no question in your mind that Senator Percy's bill, S. 1676, will be of great help.

Mr. KILLINGSWORTH. Now that is different. That is a bill that has to do with some other things, not with the recovery of the vehicles under the treaty.

Senator HAYAKAWA. I see. That has to do with the export.

Mr. KILLINGSWORTH. Yes, and the marking of parts and some other things.

Yes, we do support that bill. It is a good bill.

Senator HAYAKAWA. Then these two things are complementary?

Mr. KILLINGSWORTH. Yes, they are.

Senator HAYAKAWA. The treaty and Senator Percy's bill?

Mr. KILLINGSWORTH. Yes.

Senator HAYAKAWA. You have testified, Chief Killingsworth, that the vehicle theft, generally, and the export of stolen vehicles to Mexico are growing problems.

Specifically, title III of Senator Percy's bill mandates stiff criminal penalties for exporting vehicles with altered vehicle identification numbers, which would be placed on various crash replacement parts, such as doors and trunks.

Do you believe that title III would help curb the export of stolen vehicles?

Mr. KILLINGSWORTH. Yes, the export. However, the vehicles that are going into Mexico are not exported, really. I think that bill refers to those that are exported by ship, for example, to another country. It requires that they be inspected and that they have proper papers before they can leave the country.

Those that go into Mexico do not go through that process. They are merely driven across the border by the thief, and no one ever has a chance to inspect them.

Senator HAYAKAWA. I see. Would it help in combating vehicle theft, this process of identification that Senator Percy mandates in his bill?

Mr. KILLINGSWORTH. Certainly, it would. Yes.

I don't know if aircraft are covered in that or not.

Mr. MENDELSOHN. Senator Hayakawa, I wonder if you would permit me to give you the equivalent basis in aviation.

Senator HAYAKAWA. Yes. Please do.

Mr. MENDELSOHN. Aviation is somewhat different than automobiles.

In airline work, the tail of the aircraft has a number on it. Every country is assigned a first letter. The United States letter is "N." We have an "N" number on aircraft that is given by the FAA.

Now, that number is the plane's identity. It shows that it is an American aircraft and you should be able to go to the FAA and immediately determine if you own it or I own it or Mr. Killingsworth owns it because that is like its registration for an automobile.

Now what happens in Mexico is this. These aircraft are stolen and then brought down to Mexico where those U.S. numbers are changed. They are changed without ever advising the Federal Aviation Administration. They are changed without ever advising the U.S. owners.

Sometimes they are changed by the Mexican aviation authorities

themselves, which we think is a very clear violation of international law.

In other instances, they are changed by the Mexican individual who has the aircraft, such as the Mexican customs officials. It is this problem that can be cured in the auto theft field but that requires something special to be cured in the aviation theft field. This is the problem that we have addressed to the State Department and to the Federal Aviation Administration. But no one seems able, to date, to cure it.

Senator HAYAKAWA. When you say they change the numbers on the tail of the airplane, is this simply a job of repainting?

Mr. MENDELSOHN. That's all it is.

Senator HAYAKAWA. That's all?

Mr. MENDELSOHN. That's all it is, Senator Hayakawa.

We had a long conversation with our State Department friends. We reasoned with them together, and they told us that this does not happen in Mexico, that they were assured that it does not happen in Mexico. Well, 1 week later we brought in pictures of people in Mexico painting out the U.S. "N" number of an aircraft. It is done relatively regularly.

Senator HAYAKAWA. Do they put on a number that identifies the plane as a Mexican plane, as a rule?

Mr. MENDELSOHN. Yes, they do, Senator Hayakawa. Sometimes the Mexican Government will even register that aircraft in its aviation registry; at other times it will not.

Senator HAYAKAWA. Knowing that it has been stolen? Or do you not know that?

Mr. MENDELSOHN. I don't know that, Senator Hayakawa.

Senator HAYAKAWA. But you would suspect it?

Mr. MENDELSOHN. Yes; I would suspect it strongly.

Senator HAYAKAWA. Goodness.

What do you consider to be the weaknesses of the present convention and the proposed convention, especially the proposed, new convention?

Mr. KILLINGSWORTH. Well, it has two weaknesses. One is that it does not cover construction equipment and farm equipment.

The other weakness is that it does not cover vehicles that are stolen in—well, for example, if I went on vacation to Mexico City by car and my car was stolen while I was there, this treaty does not cover the return of that vehicle to me in the United States.

Senator HAYAKAWA. What is the difference between stealing it here and taking it to Mexico and stealing it while it is in Mexico legally?

Mr. KILLINGSWORTH. It is simply the wording of the treaty. It is worded in such a way that it does not cover that circumstance. It only covers vehicles which are stolen in one country and then taken into the other; but not taken in and then stolen.

Senator HAYAKAWA. So in this hypothetical instance—which is not really very hypothetical, I am sure—you have driven your car to Mexico City as a tourist and while you are there the car has been stolen. So what do you do next?

Mr. KILLINGSWORTH. I contact my insurance company, if I have insurance.

Senator HAYAKAWA. And you buy another car. [General laughter.]

Mr. Evans, you are with the NATB in Dallas and you know the Mexican automobile market. Why are U.S.-manufactured vehicles in such great demand?

What roles do very high Mexican tariffs play?

Mr. EVANS. Well, sir, typically in Mexico, an automobile is assembled and all of the Big Four manufacturers have assembly plants there. They are manufacturing cars, but are restricted as to the way the car has to be assembled. Various luxury features that we might have in this country, such as air-conditioning, AM–FM radio, stereo, are not typically installed on automobiles that are manufactured there. If there is a luxury, you have to pay a tariff or tax on it. Beyond that, the cars are not generally well equipped. They look good, but they do not have the type of luxuries that we enjoy.

Consequently, the Mexican citizen many times would prefer to have our version.

Senator HAYAKAWA. Are the Mexican-manufactured cars made by branches of American or German or other manufacturers?

Mr. EVANS. Yes.

Senator HAYAKAWA. Or Japanese?

Mr. EVANS. Well, the American assembly plants down there are just that. Everything is imported in and assembled there. As a matter of fact, the Government recently had some problems with the fact that General Motors, Ford, and Chrysler—American—were shipping in transmissions that were not assembled there. There was quite a controversy, and I understand a tradeoff is now in effect. They are now going to assemble the four cylinder engines for American cars in Mexico and ship them back, I understand.

It is strictly a situation where the Mexican Government is trying to control its commerce to the point where it wants Mexican citizens to buy its cars. They are trying to arrange it so that the tariffs and duties that are required will be much more reasonable if you buy the car there than if you try to go outside and buy it.

At the present time, the automobile as we know it in this country, say a Chevrolet Caprice, probably would retail in Mexico for the equivalent of about $25,000 to $30,000. Some of the smaller cars are equally expensive.

We purchased in August 1981, a Malibu, a plain automobile, with blackwall tires and no air-conditioning—a very simple automobile, and it cost $14,222 at that time. The price has gone up tremendously since that time.

Senator HAYAKAWA. Well, there is a difference, then, if that car is assembled in Mexico?

Mr. EVANS. There is a difference. You don't get a price break, necessarily, because the cars are still very expensive. If you were to buy a similar car in this country and take it down to Mexico, the duty would be such that it would bring the price of the car that you purchased here to above what you would pay for the same car in Mexico.

Senator HAYAKAWA. So, it is a form of protection?

Mr. EVANS. That's true.

The imports are restricted to such an extent that a Mexican dealer, should he decide to go to the United States to buy an automobile, has to get special permission from the Commerce Department to do so in advance. Then, on the arrival of that automobile in Mexico, he has

to pay the duty, in advance, which he knows would be a tremendous amount. Then he has to get the car registered.

Senator HAYAKAWA. These barriers to free trade then are themselves a temptation to steal.

Mr. EVANS. With a market like that—yes, sir. I could see why it would be an inducement to some extent.

Senator HAYAKAWA. There is one other question which may be irrelevant, but I want to ask it anyway since I am concerned with this particular problem.

Do the undocumented aliens, the so-called illegal aliens, who are in this country become involved in this traffic at all?

Mr. EVANS. We have had a number of cases in the past involving Mexican nationals; yes. This is as far north as our area of Dallas and even into Oklahoma. These are stolen vehicles involving Mexican nationals.

Mr. KILLINGSWORTH. Senator, let me say that I don't think these two problems go hand in hand at all. I don't think undocumented aliens are any more apt to steal a car than any other person in the country.

Mr. EVANS. That's correct.

Senator HAYAKAWA. Mr. Mendelsohn, why don't the U.S. aircraft manufacturers place numbers on aircraft hulls that cannot be removed? U.S. car manufacturers place on engines and transmissions numbers that are required by State law, such as Georgia and Tennessee.

Mr. MENDELSOHN. I am told by Mr. Howe that there is an identification plate on every aircraft, but it can be rivetted off. I wish to add, however, that we have spoken at great length to the FAA and asked them to try to encourage the aircraft manufacturers to install antitheft devices on the aircraft they manufacture. It is the same problem that Senator Percy has with cars. Why are these things produced in such a manner that they can be so easily stolen?

We would like nothing more than to have the aircraft manufacturers produce an aircraft, as we would like automobile manufacturers to produce an automobile, that cannot be stolen, or that would make its theft much, much more difficult. To this day it has not happened. Some think, by the way, that for every aircraft stolen, a new one is then produced, and it is good for the aircraft manufacturers. For every automobile stolen, some think that there is a new automobile that will be produced.

So, it seems that there is an incentive for the automobile manufacturers and the aircraft manufacturers to manufacture products that can be easily stolen. This is why Senator Percy's bill is so very desirable.

Senator HAYAKAWA. I am very grateful to all of you gentlemen for the information you have given me. I shall follow the fate of this treaty in the Senate with great interest.

Let me repeat. I am very grateful for your help, that of each of you gentlemen.

I shall now declare this meeting adjourned.

Thank you all very much.

[Whereupon, at 12:05 p.m., the committee adjourned, subject to call of the Chair.]

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